

9

United States
Circuit Court of Appeals
For the Ninth Circuit.

M. A. ELLIS,

Appellant,

VS.

J. L. REED,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Territory of Alaska, Third Division.

Filed

JUL 21 1916

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

M. A. ELLIS,

Appellant,

vs.

J. L. REED,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Territory of Alaska, Third Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Service	160
Amended Complaint	1
Answer to Amended Complaint.....	13
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions and Transcript of Evidence.	100
Bond for Costs on Appeal of Defendants.....	157
Certificate of Clerk U. S. District Court to Transcript of Record	166
Citation on Appeal.....	159
Demurrer to Amended Complaint.....	11

EXHIBITS:

Exhibit—Letter, October 8, 1912, Larkin to Morford	62
Plaintiff's Exhibit "A"—Judgment in Snook v. Thompson et al.....	22
Plaintiff's Exhibit "B"—Judgment in Reed v. Thompson et al.....	24
Plaintiff's Exhibit "D"—Mandate of U. S. Circuit Court of Appeals in Thompson et al. v. Reed	25
Plaintiff's Exhibit "E"—Certificate of Attachment of Real Property in Snook v. Thompson et al.	29

Index.	Page
EXHIBITS—Continued:	
Plaintiff's Exhibit "F"—Certificate of Levy of Writ of Attachment in Karl- son v. Thompson et al.....	28
Plaintiff's Exhibit "G"—Letter, July 14, 1912, Snook to Ellis.....	30
Plaintiff's Exhibit "G"—Letter, August 10, 1912, Ellis to Snook.....	31
Plaintiff's Exhibit "H"—Letter, Septem- ber 6, 1913, Van Slyke to Morford....	32
Defendant's Exhibit No. 1—Agreement, December 7, 1911, Between Cummings and Harper	42
Defendant's Exhibit No. 2—Abstract of Title of Battle Axe Association Group, etc.	45
Defendant's Exhibit No. 3—Quitclaim Deed, February 28, 1913, Between Cum- mings and Ellis	59
Defendant's Exhibit No. 4—Letter, October 11, 1912—to Clerk of Court.....	61
Findings of Fact and Conclusions of Law.....	71
Judgment	78
Judgment in Meredith v. Wallace et al.....	37
Judgment in Reed v. Thompson et al.....	38
Memorandum of Costs and Disbursements.....	83
Mechanic's Lien in Karlson v. Wallace et al..	34
Minute Order Denying Motion for New Trial..	87
Minute Order on Objection to Cost Bill.....	88
Minute Order Overruling Demurrer.....	12
Minute Order Overruling Objection to Attor- ney's Fee Taxed in Cost Bill.....	89

Index.

Page

Minute Order Overruling Objections to Filing Bill of Exceptions	156
Motion and Objections to the Bill of Exceptions	155
Motion for New Trial.....	85
Minute Order Extending Time to File Bill of Exceptions to March 20, 1916, etc.....	91
Minute Order Extending Time to File and Settle Bill of Exceptions to April 18, 1916.....	92
Minute Order Extending Time to File and Settle Bill of Exceptions to April 19, 1916.....	92
Minute Order Extending Time to File and Settle Bill of Exceptions to April 20, 1916.....	93
Minute Order Extending Time to File and Settle Bill of Exceptions to April 21, 1916.....	94
Minute Order Extending Time to Prepare and File Bill of Exceptions to March 20, 1916..	90
Names and Addresses of Attorneys of Record..	1
Objections to Allowance of Disbursements....	87
Opinion	63
Order Allowing Appeal and Fixing Amount of Bond for Costs and Amount of Bond for Supersedeas on Appeal.....	98
Order Allowing Withdrawal of Assignment of Errors, etc.	97
Order Granting Extension of Time in Which to File Bill of Exceptions.....	82
Order Settling, etc., Bill of Exceptions.....	154
Petition for Allowance of Appeal, and Assign- ment of Errors	94
Praecipe for Transcript of Record.....	164
Reply	21

Index.	Page
Stipulation Relating to Transcript of Evidence.	33
Supersedeas Bond on Appeal.....	161
TESTIMONY ON BEHALF OF PLAINTIFF:	
BECK, ANDREW	103
Cross-examination	105
BEHRENBURG, H.	108
ELLIS, M. A.	111
Cross-examination	119
REED, J. L.	101
TESTIMONY ON BEHALF OF DEFENDANT:	
MORFORD, S. O.	136
Cross-examination	140

*In the District Court for the Territory of Alaska,
Third Division.*

Names and Addresses of Attorneys of Record.

Mr. S. O. MORFORD, Seward, Alaska,

Mr. J. J. FINNEGAN, Seward, Alaska,

Attorneys for Defendants and Plaintiff in
Error.

Mr. J. L. REED, Valdez, Alaska,

Messrs. LYONS & RITCHIE, Valdez, Alaska,

Attorneys for Plaintiff and Defendant in
in Error. [4*]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Amended Complaint.

Comes now the plaintiff and for cause of action
against the defendants files this his amended com-
plaint and alleges:

I.

That on August 7th, 1912, William C. Snook
filed an action in the District Court of Alaska, Third

*Page-number appearing at foot of page of original certified Record.

Division, against the defendant Eri Thompson and one Dave Wallace to recover upon a claim of indebtedness; a writ of attachment was issued on the same day out of the clerk's office of said court and thereafter, to wit, on September 22d, 1912, duly levied by the United States marshal upon said Battle Axe Claim as the property of said Eri Thompson; certificate of said levy was duly filed in the office of the commissioner and recorder in which said claim is situated on the 25th day of July, 1914.

II.

Pursuant to said attachment a judgment was duly entered in the District Court of Alaska, Third Division, in favor of said William C. Snook, for the sale of the interest of said Eri Thompson in said attached property to liquidate the indebtedness found due from him to the said William C. Snook, to wit, the sum of \$582.68. A copy of said judgment is annexed hereto, marked exhibit "A" and made a part hereof. Said judgment was subsequently assigned to the plaintiff herein, and plaintiff is now the legal owner thereof and said judgment is wholly unsatisfied.

III.

On August 14, 1912, Karl Karlson filed an action in the District Court of Alaska, Third Division, against the defendant Eri Thompson and one Dave Wallace to recover upon a claim of indebtedness; a writ of attachment was issued on the same day out of the clerk's [5] office of said court, and thereafter, to wit, on September 22d, 1912, duly levied by the United States marshal upon said Bat-

the Axe Claim as the property of said Eri Thompson; certificate of said levy was duly filed in the office of Cook Inlet Precinct, in which said claim is situated on the 25th day of July, 1914.

IV.

On July 13th, 1914, assignment of said Karl Karlson's right of action in said cause to J. L. Reed, plaintiff herein, was filed in said action on July 14th, 1914, pursuant to said attachment a judgment was duly entered in the District Court of Alaska, Third Division, in favor of said J. L. Reed, for the sale of the interest of said Eri Thompson in said attached property to liquidate the indebtedness found due from him to plaintiff, to wit, the sum of \$822/30. A copy of said judgment is annexed hereto, marked exhibit "B" and made a part hereof and said judgment is wholly unsatisfied.

V.

That the defendant Eri Thompson was on the 25th day of October, 1909, the owner of the Battle Axe Claim on Thunder Creek, in the Cook Inlet Recording Precinct, Territory of Alaska, and ever since said date has been and now is such owner.

VI.

That on or about the 22d day of May, 1910, a certain paper, dated the 29th day of October, 1909, purporting to be a deed of conveyance and which was in form a deed of conveyance, purporting to convey from the defendant Eri Thompson to the defendant J. M. Cummings certain real chattel property, the same being then and now the property of the defendant Eri Thompson, was filed for record

in the office of the recorder of Cook Inlet Precinct, at Susitna, Alaska, and was thereafter duly recorded in the records of said office. The property purported to be sold and conveyed by said purported deed was described therein as follows, to wit:

“That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook [6] Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the town of Susitna, Alaska, known as Thompson and Price saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon was situated.

That certain log house adjacent to John Jones' bath-house, and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first part and also that certain log cabin situated in the rear of said log house, with all chattels therein contained.”

VII.

That said purported deed was not made in good faith nor for any valid consideration, but was a device for, and was made and received with, the intention of placing the property of said Thompson beyond the reach of creditors, and particularly this plaintiff, and for the purpose of hindering, delaying and defrauding this plaintiff in the collection of his said claims and judgments, and that

said purported sale and conveyance were made and accepted in consummation of a combination and conspiracy between said Thompson and Cummings to defraud plaintiff and other creditors and that the said defendant Ellis long prior to the 28th day of February, 1913, had knowledge and knew of said fraudulent intent and conspiracy and of the fraud rendering void said deed as to plaintiff's claims and judgments and of the existence of said claims and judgments and of the fraudulent intent of his immediate grantor Cummings and of each and all the facts rendering void the title of his said grantor Cummings as to plaintiff's rights and judgments herein.

VIII.

Plaintiff alleges that Dave Wallace departed from the Territory of Alaska on or about the month of October, 1907, and that he has not returned to the said Territory since said date. That he departed from the Territory of Alaska for the purpose of defrauding and defeating plaintiff in the collection of his claims and judgments. That Dave Wallace has no property, real or personal in the Territory of Alaska or elsewhere known to plaintiff out of which plaintiff could satisfy his judgments herein and that the said Dave Wallace is insolvent. [7]

IX.

That the said deed between Thompson and Cummings heretofore set forth was given and made for the purpose of hindering, delaying and defrauding plaintiff in the collection and satisfaction of plaintiff's claims and judgments herein and transferred

all of the property, real and personal, of the defendant Eri Thompson in the Territory of Alaska or elsewhere known to plaintiff, and out of which he could satisfy his judgment herein, and that the said Eri Thompson is insolvent and that neither Dave Wallace nor Eri Thompson have any other property, real or personal, individual or partnership, other than that transferred by Eri Thompson to J. M. Cummings out of which plaintiff could secure the payment and satisfaction of his judgments herein.

X.

That on the 28th day of March, 1913, the defendant M. A. Ellis, filed for record in the office of the recorder of the Cook Inlet Recording Precinct, Territory of Alaska, a deed, dated February 28th, 1913, purporting to convey from J. M. Cummings, grantor, to M. A. Ellis, grantee, the Battle Axe Group of mining claims attached in this action, for a consideration of ten thousand dollars; that said defendant Ellis went into actual possession of the said mining claims on or about the 7th day of December, 1911, under a contract entered into on said date between J. M. Cummings and M. A. Ellis for the purchase of the said claims by Ellis; that a paper purporting to be a receipt from J. M. Cummings to M. A. Ellis for \$4,000 as payment on the above contract of purchase for the sale of the above mining claims was filed for record in the office of the recorder for the Cook Inlet Recording Precinct, Territory of Alaska, on the 11th day of March, 1912, in Vol. 1 Misc., at page 41; that prior to and continuing after the posses-

sion of said Battle Axe group of mining claims by Ellis under said contract of purchase a cause of action had been commenced in this court on the 22d day of April, 1911, entitled, Thomas H. Meredith vs. Eri Thompson and J. M. Cummings, to set aside said deed between Thompson and Cummings dated [8] October 25th, 1909, and recorded on the 22d day of May, 1910, conveying said Battle Axe group of mining claims as being in fraud of the creditors of Thompson and to subject said claims to a creditors lien of judgment in favor of Meredith; said judgment having been obtained by Meredith in this court on the 25th day of April, 1910, for the sum of \$1,598.60 and costs, and thereafter on the 22d day of May, 1910, plaintiff Meredith filed for record in the office of the recorder of the Cook Inlet Recording Precinct, Territory of Alaska, a certified transcript of said judgment; that on the 12th day of January, 1912, Meredith assigned his judgment to J. L. Reed who was substituted as plaintiff in said cause and thereafter judgment was entered in favor of plaintiff in said latter cause on the 4th day of May, 1912, from which an appeal was taken, and that thereafter, to wit; on the 3d day of February, 1913, the Circuit Court of Appeals affirmed said judgment, and held said deed from Thompson to Cummings, dated October 25th, 1909, void for fraud. That on the 7th day of August, 1912, plaintiff's assignor William C. Snooks filed an action in this court entitled William C. Snooks vs. Eri Thompson and Dave Wallace S-20 for work and labor done by the said Snooks as a placer

miner on said Battle Axe group of mining claims in the year 1907; and that on the 14th day of August, 1912, plaintiff's assignor, Karl Karlson filed an action in this court entitled Karl Karlson vs. Eri Thompson and Dave Wallace S-21, for work and labor done by the said Karlson on said Battle Axe group of mining claims in the years 1906 and 1907; and that in said causes plaintiff attached and levied upon said Battle Axe group of mining claims on the 22d day of September, 1912, that on, before and after said date the defendant Ellis was and continued in actual possession of said mining claims aforesaid; that the return of said levy of attachment was filed in this court on the 3d day of December, 1912; that the said defendant Ellis had previous notice and knowledge of each and all the foregoing facts and proceedings hereinbefore set forth in this paragraph and all of which occurred prior to the 28th day of February, 1913, the date of the purported deed [9] between Cummings and Ellis and, hence, the 28th day of March, 1913, the date when said deed was filed for record, and of the existence before said dates of plaintiff's claims, judgments, attachments and levies of attachment and all of the facts affecting the validity of said purported deed and that the said Ellis had previous notice of the fraudulent intent of his immediate grantor Cummings, and that said deed was made by Cummings in furtherance of a combination and conspiracy between Thompson and Cummings to defraud the creditors of the former and particularly this plaintiff and of each and all

the facts rendering void the title of Cummings and of the fraud rendering void the deed dated October 25th 1909, between Thompson and Cummings.

XI.

The defendant M. A. Ellis claims to be the owner of said Battle Axe claim by virtue of the aforesaid deed from said J. M. Cummings to whom said Thompson made a deed thereof. That said deed from Thompson to Cummings has been held by this court and the Circuit Court of Appeals, in a proceeding to avoid it for fraud, to have been made in fraud of creditors and wholly null and void. Said Thompson has not at any time made any other deed to any person than the one to Cummings, set aside by the Court as aforesaid for fraud, and the legal title to said Battle Axe claim is still vested in the said Thompson and remains subject to execution for his indebtedness, the claim of title thereto by said defendant Ellis being based and wholly dependent upon said fraudulent and void deed to J. M. Cummings.

XII.

That plaintiff has no plain, speedy and adequate remedy at law.

WHEREFORE, plaintiff prays for a decree of this court declaring said purported deed of conveyance from the defendant Eri Thompson to the defendant J. M. Cummings to have been without any consideration and made in fraud of creditors of said Eri Thompson and of plaintiff's judgments and that the same be vacated, set aside and held for naught; and that the property therein described

be decreed to be still the property of said Eri Thompson and subject to the [10] lien of plaintiff's judgments, attachments and certificates of attachment filed and recorded as hereinabove set forth and that the said deed from Thompson to Cummings be decreed void as to plaintiff's rights and that the said deed from J. M. Cummings to M. A. Ellis dated the 28th day of February, 1913, purporting to convey said Battle Axe group of mining claims conveyed no title or interest, legal or equitable superior to plaintiff's judgments, attachments and certificates of attachment filed and recorded and that any title or interests, legal or equitable therein or thereto are junior and inferior to the rights of this plaintiff by virtue of the same. Plaintiff further prays that this court may order and decree that said Battle Axe group of mining claims be sold upon execution according to law to satisfy plaintiff's judgments herein described, that plaintiff's be allowed a reasonable attorney's fees herein and for his costs and disbursements and further relief as he may be entitled to in equity and good conscience.

LYONS & RITCHIE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

J. L. Reed, being duly sworn deposes and says, that he is the plaintiff in the above-entitled action and that he has read the foregoing amended complaint and he believes it to be true.

J. L. REED.

Subscribed and sworn to before me this 26 day of June, 1915.

[Seal]

D. F. MILLARD,
Notary Public for Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 26, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy.
[11]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and M. A. ELLIS,

Defendants.

Demurrer to Amended Complaint.

Comes now the defendant M. A. Ellis in the above-entitled cause, by his attorney, S. O. Morford, and demurs to the amended complaint on file herein, and for cause of demurrer states:

That said amended complaint does not state facts sufficient to constitute a cause of action against defendant M. A. Ellis, either in law or equity.

Wherefore, defendant M. A. Ellis prays he may hence be dismissed with his costs.

S. O. MORFORD,
Atty. for Defendant, M. A. Ellis.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 19, 1915. Ar-

thur Lang, Clerk. By Robert L. Wever, Deputy.
[12]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Minute Order Overruling Demurrer.

Now, on this day, this matter came on to be heard; J. L. Reed and E. E. Ritchie appearing as attorneys for the plaintiff and S. O. Morford appearing as attorney for the defendants and on behalf of the demurrer and after arguments had and the court being fully advised in the premises,

IT IS ORDERED that said demurrer be and the same is hereby overruled and the defendants are given ten days in which to further plead or answer, and said case is set for trial for the Seward, 1915, term to follow the conclusion of the jury cases.

February 1915 Term—October 15th—120th Court Day Friday.

Entered Court Journal No. 9, page 358. [13]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Answer to Amended Complaint.

Comes now the defendant M. A. Ellis answering unto plaintiff's amended complaint on file herein.

I.

Answering unto paragraph I in plaintiff's amended complaint contained: This defendant has not sufficient knowledge or information to form a belief as to the truth or falsity of the matters and things therein stated, and therefore denies the same and the whole thereof.

II.

Answering unto paragraph II in plaintiff's amended complaint contained: This defendant has not sufficient knowledge or information to form a belief as to the truth or falsity of the matters therein stated, and therefore denies the same and the whole.

Further answering unto said paragraph II this defendant denies that a copy of any judgment was attached to said amended complaint as in said paragraph set forth, or at all.

III.

Answering unto paragraph III in plaintiff's amended complaint contained: This defendant has not sufficient knowledge or information to form a belief as to the truth or falsity of the matters therein stated, and therefore denies the same and the whole thereof.

IV.

Answering unto paragraph IV in plaintiff's amended complaint contained; This defendant has not sufficient knowledge or information to form a belief as to the truth or falsity of the matters [14] therein stated, and therefore denies the same and the whole thereof.

Further answering unto said paragraph IV this defendant denies that a copy of any judgment was attached to said amended complaint as in said paragraph set forth, or at all.

V.

Answering unto paragraph V in plaintiff's amended complaint contained: This defendant denies that Eri Thompson is the owner of the Battle Axe Claim on Thunder Creek, in the Cook Inlet Recording Precinct, Territory of Alaska, or that he has been the owner thereof since the 25th day of October, 1909, and this defendant avers the facts to be, that on or about the month of October, 1909, the said Eri Thompson then being the owner of the Battle Axe association mining claim on Thunder Creek in Cook Inlet Recording Precinct, Territory of Alaska, sold and conveyed said mining claim to J. M. Cummings.

That on or about the 12th day of June, 1910, said J. M. Cummings executed to Alfred Harper a lease and option to purchase said Battle Axe association mining claim.

That thereafter, about February, 1912, the said Alfred Harper for a valuable consideration assigned and transferred said lease and option to purchase to this defendant.

That on or about said date of February, 1912, this defendant paid to J. M. Cummings for and on account of said purchase the sum of Four Thousand (\$4000) Dollars.

That on or about February 28th, 1913, at the city of Seattle, State of Washington, this defendant made the final payment of the purchase price of said mining claims to said J. M. Cummings, and received a deed therefor, which deed was duly recorded in the Cook Inlet mining and recording Precinct on the 28th day of March, 1913.

That at the time of said final payment, said J. M. Cummings and his attorney, S. O. Morford, stated to this defendant that the title to said Battle Axe mining claim was absolute and perfect, save and except a certain judgment in favor of Thomas H. Meredith and [15] against Eri Thompson and J. M. Cummings in the sum of about Sixteen Hundred (\$1600) Dollars, and that there were no other claims against, or incumbrances on said property.

That at the time of said final payment there was placed in the hands of S. O. Morford, trustee, out of the moneys paid by this defendant to said J. M. Cummings the sum of Two Thousand (\$2000) Dol-

lars, which said sum was to be held by said Morford and paid to said Cummings in case said suit then on appeal in the Circuit Court of Appeals should be decided in favor of J. M. Cummings, but if said suit was decided adverse to said Cummings, then said Morford was to pay said judgment out of the moneys held by him as trustee.

That this defendant is informed and believes, and therefore alleges that said suit of Thomas H. Meredith vs. Thompson and Cummings was decided in favor of said Meredith and against said Cummings, and that afterwards said judgment was fully paid and satisfied out of the said funds held by S. O. Morford, trustee.

That this defendant had no knowledge or information that there existed any other claims or demands of any kind or nature against Eri Thompson and Dave Wallace or Eri Thompson and J. M. Cummings, other than the suit of Thomas H. Meredith vs. Thompson and Cummings.

That this defendant had no knowledge or information that there was any defect in the title of J. M. Cummings to said Battle Axe claim, or any claim of defect other than the suit of Meredith, until long after said final payment had been made by this defendant, and the deed of said property received by this defendant from said J. M. Cummings.

VII.

Answering unto paragraph VIII in plaintiff's amended complaint contained, this defendant denies the same and the whole thereof.

VIII.

Answering unto paragraph VIII in plaintiff's

amended complaint [16] contained, this defendant has not sufficient knowledge or information as to the truth or falsity of the allegations of said paragraph, and therefore denies the same and the whole thereof.

IX.

Answering unto paragraph IX in plaintiff's amended complaint contained, this defendant states that he has no knowledge or information sufficient to form a belief as to the truth or falsity of the matters therein alleged, and therefore denies the same and the whole thereof.

X.

Answering unto paragraph X in plaintiff's amended complaint contained, this defendant admits that he filed for record a deed from J. M. Cummings to M. A. Ellis, of the Battle Axe group of mining claims and denies that he went into possession of said mining claims on the 7th day of December, 1911, or at any time prior to the — day of —, 1912.

This defendant denies that he had any knowledge, prior to May, 1912, of any action against J. M. Cummings affecting his title to said Battle Axe group of mining claims, denies that he now has or ever had any knowledge or information that the conveyance was void or given in fraud of creditors, and at all times was assured by J. M. Cummings and his attorney S. O. Morford, that said group of mining claims was the lawful property of J. M. Cummings, and that the said Cummings had full right and authority to sell the same.

This defendant admits that prior to his final pay-

ment on said mining claim he was informed that a judgment had been entered against Thompson and Cummings for the sum of about \$1,600.00 and that said judgment was on appeal to the Circuit Court of Appeals, and if not reversed said judgment would be paid by the said J. M. Cummings.

This defendant denies that he had any knowledge or information of any suit filed by Wm. C. Snooks against Thompson and Wallace or suit of Karl Karlson vs. Thompson and Wallace, or that any [17] levy or attempted levy had been made upon said Battle Axe group of mining claims in September, 1912, or at any other time prior to July, 1914; that this defendant was absent from the Territory from about the 1st day of September, 1912, to about March, 1913:

This defendant denies that he ever knew or now knows that said transfer and conveyance of said Battle Axe group of mining claims from Thompson to Cummings was in fraud of creditors or intended as a fraud, and this defendant avers that he believed the title of said property was lawfully vested in said J. M. Cummings when he purchased the same from Cummings.

This defendant denies any knowledge or information of any claim or demand of any person or persons, other than the suit of said Meredith vs. Thompson and Cummings, either before or at the time of his final payment to said J. M. Cummings for said Battle Axe group of mining claims, on or about the 28th day of February, 1913. He denies that he had any knowledge or information of any suit or attach-

ment of Karl Karlson or William C. Snooks or any other person or persons against J. M. Cummings, or Dave Wallace, or Eri Thompson, at or prior to the 28th day of February, 1913, the date when this defendant made final payment to said J. M. Cummings and received from him a deed to said Battle Axe group of mining claims.

XI.

Answering unto paragraph XI in plaintiff's amended complaint contained, this defendant admits that he claims to be the owner of said Battle Axe group of mining claims by virtue of a deed from J. M. Cummings, and this defendant denies that said deed from said Thompson to said Cummings was held by this court or the Circuit Court of Appeals to have been made in fraud of creditors and wholly null and void, and avers that this defendant purchased said Battle Axe group of mining claims in good faith, paying full value therefor and without knowledge of any wrong or defect in his grantor's title. He denies that said deed of Thompson to Cummings has been [18] held void by this Court or the Circuit Court of Appeals, other than as against the judgment of Meredith vs. Thompson et al., and avers that said judgment has been fully paid and satisfied.

That this defendant, by reason of plaintiff's action casting a cloud upon defendant's title, has been damaged in the sum of Five Hundred Dollars (\$500).

Wherefore, defendant prays judgment against plaintiff:

1. That plaintiff take nothing by this action.

2. That this defendant have and recover from plaintiff damages in the sum of Five Hundred Dollars (\$500).

3. That he have and recover from plaintiff reasonable attorney's fees and costs of suit, and for such other and further relief as he may be entitled to in equity.

S. O. MORFORD,

Attorney for Defendant M. A. Ellis.

United States of America,
Territory of Alaska,—ss.

M. A. Ellis, being first duly sworn, deposes and says, that he is one of the defendants in the above-entitled cause, that he has read the above and foregoing answer to plaintiff's amended complaint, knows the contents thereof, and that the same is true, as he verily believes.

M. A. ELLIS.

Subscribed and sworn to before me this 5th day of October, A. D. 1915.

[Seal]

CURTIS R. MORFORD,

Notary Public in and for the Territory of Alaska,
Residing at Seward Therein.

My commission expires October 8, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 21, 1915. Arthur Lang, Clerk. By Robert L. Wever, Deputy. [19]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS, and J. M. CUM-
MINGS,

Defendants.

Reply.

Comes now the plaintiff herein and replying unto the new matter contained in the affirmative defenses set forth in defendant's answer on file herein:

1.

Plaintiff denies each and every allegation of the new matter constituting a defense herein set forth in paragraphs five, eight, ten and eleven of defendant's answer on file herein.

LYONS & RITCHIE and
J. L. REED,

Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

J. L. Reed, being first duly sworn deposes and says, that he is the plaintiff in the above-entitled action and that he has read the foregoing reply and he believes the same to be true.

J. L. REED.

Subscribed and sworn to before me this 11th day of November, 1915.

[Seal]

WM. H. WHITTLESEY,
Notary Public for Alaska.

Commission expires Nov. 30, 1916.

Service accepted this 11th day of November, 1916.

S. O. MORFORD and
J. J. FINNEGAN,
Attorneys for Defendant.

I hereby certify that the foregoing is a full, true and correct copy of the Reply on file in the above cause.

J. L. REED.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 11, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[20]

Plaintiff's Exhibit "A"—Judgment in Snook v. Thompson et al.

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-20.

WILLIAM C. SNOOK,

Plaintiff,

vs.

ERI THOMPSON and DAVE WALLACE, Co-
partners as WALLACE and THOMPSON,
Defendants.

JUDGMENT.

This cause came on to be heard before the Court this 14th day of July, 1914, upon the motion of plaintiff for judgment as prayed for in plaintiff's complaint, the defendants being in default for pleading or other appearance. Plaintiff appeared by his counsel, J. L. Reed and E. E. Ritchie, and no person appeared for defendants, or either of them. It being made to appear to the Court from the verified complaint of plaintiff that defendants are indebted to him in the sum of Five Hundred and Eighty-two & 68/100 dollars (\$582.68) for work and labor performed for them as a placer miner pursuant to contract of employment, and that real property belonging to the defendant Eri Thompson, within the jurisdiction of this court has been attached in this action to secure plaintiff's claim:

It is therefore ordered and adjudged that the property heretofore attached herein to secure plaintiff's claim, as aforesaid, be sold upon execution to satisfy the amount of plaintiff's demand, with accrued interest, costs of action and sale, or so much of said property as may be necessary to satisfy plaintiff's claim, interest and costs; and that in case of sale of less than the whole of said property the remainder be delivered to the defendant Eri Thompson, upon demand.

Done in open court at Valdez, Alaska, this 14th day of July, 1914.

FRED M. BROWN,
Judge.

**Plaintiff's Exhibit "B"—Judgment in Reed v.
Thompson et al.**

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-21.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and DAVE WALLACE, Co-
partners as WALLACE and THOMPSON,
Defendants.

JUDGMENT.

This cause came on to be heard before the Court this 14th day of July, 1914, upon the motion of plaintiff for judgment as prayed for in plaintiff's complaint, the defendants being in default for pleading or other appearance. Plaintiff appeared in person and by his counsel, E. E. Ritchie, and no person appeared for the defendant or either of them. It being made to appear to the Court from the verified complaint of plaintiff that defendants are indebted to him in the sum of \$525 upon an assigned account for work and labor performed for defendants by plaintiff's assignor, Karl Karlson, together with interest on said sum from March 16, 1907, amounting in the aggregate to \$822.30; and that real property belonging to the defendant Eri Thompson within the jurisdiction of the Court has been attached in this action to secure plaintiff's claim:

It is therefore ordered and adjudged that the real

property heretofore attached as aforesaid in this action be sold upon execution to satisfy the amount of plaintiff's demand, with accruing interest, costs of action and sale; or so much of said property as may be necessary to satisfy plaintiff's claim, interest and costs; and that in case of sale of less than the whole of said property the remainder be delivered to the defendant Eri Thompson, on demand.

Done in open court at Valdez, Alaska, this 14th day of July, 1914.

FRED M. BROWN,
Judge.

Plaintiff's Exhibit "B." Cause S-49. [22]

**Plaintiff's Exhibit "D"—Mandate of U. S. Circuit
Court of Appeals in Thompson et al. vs. Reed.**

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

No. 2162.

ERI THOMPSON and J.M. CUMMINGS,

vs.

J. L. REED.

MANDATE.

United States of America,—ss.

The President of the United States of America, to
the Honorable the Judges of the District Court
of the United States for the Territory of Alaska,
Third Division, GREETING:

(Seal of the Circuit Court.)

WHEREAS, lately in the District Court of the

United States for the Territory of Alaska, Third Division, before you, or some of you, in a cause between J. L. REED, Plaintiff, and ERI THOMPSON and J. M. CUMMINGS, Defendants, No. S. 9, a judgment was duly filed on the 4th day of May, A. D. 1912, in favor of the said plaintiff and against the said defendants; which said judgment is of record in the said cause in the office of the clerk of said District Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

AND WHEREAS, on the 23d day of October, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted to the Court for consideration and decision on briefs:
[23]

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellants.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellants for his costs herein expended, and have execution therefor.

(February 3, 1913.)

YOU, THEREFORE, ARE HEREBY COMMANDED That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

WITNESS, The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the sixth day of March, in the year of our Lord one thousand, nine hundred and thirteen.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Amount of costs allowed and taxed in favor of the appellee and against the appellants as per annexed Bill of Items, taxed in detail: \$21.75.

F. D. MONCKTON,
Clerk.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 19, 1913. Angus McBride, Clerk. By V. A. Paine, Deputy.

Plaintiff's Exhibit "D." S-49. [24]

**Plaintiff's Exhibit "F"—Certificate of Levy of
Writ of Attachment in Karlson vs. Thompson
et al.**

*In the District Court for the Territory of Alaska,
Third Division.*

654.

KARL KARLSON,

Plaintiff,

vs.

ERI THOMPSON and DAVE WALLACE, Co-
partners as WALLACE & THOMPSON,
Defendants.

**CERTIFICATE OF LEVY OF WRIT OF
ATTACHMENT.**

I hereby certify and make oath, that as special deputy United States marshal, specially authorized, appointed and deputed to *serve levy* a certain Writ of Attachment, hereto annexed, that I levied the same upon the Battle Axe association placer claim on Thunder Creek, in Cook Inlet Precinct and Recording District, on the 22 day of Sept. 1912, by posting a copy of the same in a conspicuous place upon said claim to wit, upon by Posting a copy of the same on the Battle Axe group on Thunder Creek in the Cook Inlet Precinct.

H. BAHRENBURG.

Subscribed and sworn to before me this 23d day of
November, 1912.

[Seal]

LEE VAN SLYKE,
Notary Public Territory of Alaska.

Filed in the District Court, Territory of Alaska, Third Division. Dec. 3, 1912. Angus McBride, Clerk. By V. A. Paine, Deputy.

Filed for record July 25, 1914, at 10 min. past 4 P. M., Volume 1 of Miscellaneous, Page 73, Records of Cook Inlet.

LEE VAN SLYKE,

Commissioner and Ex-Officio Recorder.

Plaintiff's Exhibit "F." Cause S-49. [25]

Plaintiff's Exhibit "E"—Certificate of Attachment of Real Property in Snook vs. Thompson et al.

Plaintiff's Exhibit "E"—Cause S-49.

*In the District Court for the Territory of Alaska,
Third Division.*

WILLIAM C. SNOOK,

Plaintiff,

vs.

ERI THOMPSON and DAVE WALLACE, Copart-
ners as WALLACE AND THOMPSON,
Defendants.

**CERTIFICATE OF ATTACHMENT OF REAL
PROPERTY.**

United States of America,
Territory of Alaska,—ss.

Henry Barrenberg, being duly sworn, says he is a citizen of the United States, over twenty-one years of age, and a resident of the Territory of Alaska; that as special deputy United States Marshal he attached the interest of the defendants in the

Battle Axe association placer mining claim of 160 acres, situated on Thunder Creek, Cook Inlet Precinct, Alaska, pursuant to a writ of attachment issued in the above-entitled action out of the clerk's office of the above-entitled court, on the 22th day of Sept. 1912.

H. BAHRENBURG.

Sworn to and subscribed before me this 23d day of Nov., 1912.

[Seal]

LEE VAN SLYKE,
Notary Public.

Filed in the District Court, Territory of Alaska, Third Division. Dec. 3, 1912. Angus McBride, Clerk. By V. A. Paine, Deputy.

Filed for record July 25, 1914, at 11 Min. past 4 P. M. Volume 1 of Miscellaneous, page 74, Records of Cook Inlet.

LEE VAN SLYKE,
Commissioner and Ex-officio Recorder. [27]

**Plaintiff's Exhibit "G"—Letter, July 14, 1912,
Snook to Ellis.**

Hope, Alaska, July 14th, 1912.

Mr. Ellis,

Thunder Creek, Alaska.

Dear Sir:—

Following the advice of Mr. McAdams, I am writing you in regard to Mr. Thompson and Thunder Creek. Mr. M. tells me you have bought Thunder Creek of Mr. Thompson and that the money is tied up by the courts to pay labor claims. Is this so?

I have a claim against Thompson for labor on Thunder Creek of \$382.00 with Int. and costs. Am supporting a family and cannot afford to lose this if there is any show to get it. Will you tell me in what Bank the money is deposited and any pointers you can give me will be appreciated. I can refer you to Henry Bahrenburg.

Very respectfully,

(Signed) WM. C. SNOOK.

**Plaintiff's Exhibit "G"—Letter, August 10, 1912,
Ellis to Snook.**

On the back of the above is written the following:

Thunder Creek, Aug. 10, 1912.

W. C. Snook,

Hope, Alaska,

Dear Sir:—

Your favor of July 14 at hand in reply will say that I would like very much to help you get your money but do not know of any way unless you are a party to that suit. They have a judgment against Thompson and he has appealed and put up a cash bond. I am paying the money to him or rather to Cummings through the Bank of Seward. The last ~~cash~~ payment will be made this fall, Oct. 15th, I believe, if you are one of those interested in the judgment you will be protected, if not I would advise you to sue and get judgment. regards to Mr. McAdams. Think I may be in Hope this fall. Will look you up.

(Signed) M. A. ELLIS. [29]

**Plaintiff's Exhibit "H"—Letter, September 6, 1913,
Van Slyke to Morford.**

Susitna, Alaska, Sept., 6th, 1913.

Mr. S. O. Morford,
Attorney at Law,
Seward, Alaska.

Dear Sir:

Yours received mail of Aug. 28th, and will say the deed you speak of has been properly indexed in the Index to deeds, the reason it was *spread* in Powers of Attorneys was that I had the records of deeds with me in Chicago.

The cases you speak of were not filed here but in the District Court, I thought I spoke *to as* to them this spring in your office, but guess I forgot to do so, I think the parties were Snooks in fact I know he was one of them and I think the other was a man by name of Karlson, I swore the special Deputy Marshall as to the service.

I just looked it up and Karlson is the other Plaintiff.

We have also had a lovely summer, but it would have been better for the Camp if we had had some rain as they have been short of water to sluice with.

With best wishes I am yours truly,

LEE VAN SLYKE.

Plaintiff's Exhibit "H." S-49. [30]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S./49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Stipulation Relating to Transcript of Evidence.

It is hereby stipulated between the parties to this cause that the annexed and foregoing official stenographer's transcript of evidence herein may be certified by the Judge of this court, who tried this cause, to be a true and complete transcript of all the evidence adduced or offered on the trial herein, together with the original exhibits offered and admitted in evidence by the plaintiff and defendants at the trial or true copies thereof (except as hereinafter agreed; and may thereupon be filed as such by the clerk of this court, in making up, certifying and transmitting the record on appeal herein, may include said original transcript of evidence in such record on appeal as a part thereof, with the consent of the trial Judge, instead of making a copy thereof as a part of the record on appeal.

It is further stipulated that in lieu of Plaintiff's Exhibit "C" in this cause, copies of the following three records may be substituted therefor and constitute said exhibit, namely:

1. The notice of lien of Karl Karlson in Case #S/21.

2. The judgment in Case #233 entitled Thomas H. Meredith vs. Dave Wallace and Eri Thompson, copartners.

3. The judgment in case #S/9 entitled J. L. Reed vs. Eri Thompson and J. M. Cummings.

Further, that the clerk of this court, in making up, certifying and transmitting the record on appeal herein may substitute the said three records in lieu of said exhibit "C."

J. L. REED,

Plaintiff *in Pro. Per.*

S. O. MORFORD and

J. J. FINNEGAN,

Attys. for Deft. Ellis.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, April 21, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [31]

RECORDER'S OFFICE FOR COOK INLET
PRECINCT.

S—21.

KARL KARLSON,

Claimant,

vs.

DAVE WALLACE, JOE LE CLAIR et al.,

Defendants.

Mechanic's Lien in Karlson vs. Wallace et al.

Notice is hereby given that Karl Karlson claims a lien upon eight mining claims situate and beginning

at the mouth of Thunder Creek, each lying 330 feet upon each side of Thunder Creek and running upstream and adjoining each other, located and recorded by Joe Leclair in his own name and as agent for Dave Wallace and others whose names are unknown to claimant, the same being in and recorded in the Cook Inlet Precinct and Recording District and Territory of Alaska for work and labor done upon buildings in said precinct and territory used, for and in the development of said mining claims.

That the names of the owners, or reputed owners thereof are Dave Wallace, Joe LeClair and others unknown to claimant, but which appear of record in the recorder's office of said recording district to which reference is made that said names might be made a part hereof; That Dave Wallace employed claimant; that the following is a true statement of the demand and contract of said claimant for work, to wit: five months and one-quarter of a month at \$100.00 per month, or a total sum of \$525.00; that the same was done and performed between and inclusive of the 8th day of October, 1906, and the 16th day of March, 1907, and the rendition of said services was closed on the 16th day of March, 1907; that thirty days have not elapsed since that time; that the amount of claimant's demand for said work and labor is \$525.00; that no part thereof has been paid, and that there is now due and unpaid, after deducting all just credits and off-sets the sum of \$525.00 in which amount claimant claims a lien upon said property. [32]

United States of America,
Territory of Alaska,—ss.

Karl Karlson, being first duly sworn, says that he is the claimant named in the foregoing claim, that he has read the same and knows the contents thereof, and believes the same to be true.

KARL KARLSON.

Subscribed and sworn to before me this 12th day of April, 1907.

[Notarial Seal]

J. L. REED,

Notary Public in and for the Territory of Alaska,
Residing at Seward.

Filed in the District Court, Territory of Alaska,
Third Division. Jul. 13, 1914. Arthur Lang,
Clerk. By Chas. A. Hand, Deputy.

District of Alaska,

Cook Inlet Precinct, and Recording District,—ss.

The within instrument was filed for record at 5 o'clock P. M., April 29, 1907, and duly recorded in Book 1 liens on page 73 of the records of said district.

JNO. GOODELL,

District Recorder. [33]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 233.

THOMAS H. MEREDITH,

Plaintiff,

vs.

DAVE WALLACE and ERI THOMPSON, Copart-
ners, as WALLACE and THOMPSON,

Defendants.

Judgment in Meredith vs. Wallace, et al.

This cause coming on regularly for trial on the 5th day of April, 1910, E. E. Ritchie and J. L. Reed, appearing as counsel for plaintiff, and S. O. Morford, Esq., for the defendant Eri Thompson. A trial by jury having been waived by the parties, the cause was tried by the Court without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined and the affidavit of S. O. Morford, Esq., as to what the defendant Eri Thompson would testify if present, and documentary evidence introduced by plaintiff and the evidence being closed, the cause was submitted to the Court for consideration, and decision; and, after deliberation thereon, the Court files its findings of fact and conclusions of law in writing, and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that Thomas H. Meredith, the plaintiff, do have and re-

cover, of and from the defendants Dave Wallace and Eri Thompson, copartners, jointly and severally, the sum of One Thousand Five Hundred and Ninety-eight Dollars and Eighty Cents (\$1,598.80), with interest thereon at the rate of eight per cent per annum from the date hereof until paid, together with the plaintiff's costs and disbursements incurred in the action, amounting to the sum of \$32.65.

Dated this 25th day of April, A. D. 1910.

PETER D. OVERFIELD,

District Judge. [34]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. April 25th, 1910. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy.

Entered Court Journal No. 5, page 824. Plaintiff's Exhibit "A." Cause No. S-9. [35]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S.—9.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and J. M. CUMMINGS,

Defendants.

Judgment in Reed v. Thompson, et al.

This cause came on for hearing on the 17th day of February, A. D. 1912, and was heard upon the amended complaint, answers, reply, exhibits, depositions, affidavit, proof in the cause and arguments

of counsel and the cause was submitted to the Court for consideration and decision, and after deliberation thereon and the Court having rendered its decision therein, files its findings of fact and conclusions of law in writing.

Wherefore, it is by the Court ordered, adjudged and decreed that the conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings purporting to convey to J. M. Cummings the following described property, situate, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon situated in the Town of Susitna, Alaska, known as Thompson and Price's saloon; together with and including all fixtures, cigar and liquor license, and the lot or parcel of land whereon said saloon is situated.

That certain log house adjacent to John Jones' bath-house and lying between said bath-house and the general merchandise store of H. W. Nagley, in said Susitna; together with all fixtures and chattels therein contained, owned by said first party; and also that certain log cabin situated in the rear of said log house, with all chattels or other property therein contained.

—was made with intent to hinder, delay and defraud the creditors of the said Eri Thompson, and is void as against plaintiff's judgment rendered in Cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners, as Wallace and Thompson and as against plaintiff in this action.

It is further ordered, adjudged and decreed that plaintiff be [36] and is hereby declared and adjudged to have a valid lien under his judgment given and entered in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners as Wallace and Thompson, and in this action upon the real property described in said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, described as follows, to wit, situated, lying and being in Susitna, Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct.

An undivided one-half interest in and to that certain saloon building situated in the town of Susitna, Alaska, known as Thompson and Price's saloon; and the lot or parcel of land whereon said saloon building is situated.

And that said lien commences and dates from the 22d day of May, 1910, and it is hereby adjudged that the said described real property be and is subject to

plaintiff's lien, and that the filing and recording of said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, is hereby cancelled, vacated and set aside in so far as the same conflicts with plaintiff's judgment or rights thereunder of plaintiff's lien.

And it is further ordered, adjudged and decreed that the plaintiff in this action is at liberty to proceed upon his executions heretofore issued upon the judgment in cause No. 233, entitled Thomas H. Meredith, plaintiff, vs. Dave Wallace and Eri Thompson, copartners as Wallace and Thompson, or to issue another execution and combine in one execution the principal and interest and attorneys' fees and costs of suits and expenses of sale and disbursements in Cause No. 233 and in this action, as he may be advised; and should plaintiff so elect to proceed under one execution, he shall after deducting the expenses of sale, costs, disbursements and attorney fee of this action, apply the surplus to the satisfaction of his judgment in Cause No. 233.

Judgment is also rendered against defendant Eri Thompson and [37] J. M. Cummings for the costs and accruing costs and disbursements of this action, taxed at \$86.60, for which an execution will issue.

Done in open court this 4th day of May, 1912.

EDWARD E. CUSHMAN,
District Judge.

Entered Court Journal No. 6, page No. 784.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 4th, 1912. Ed. M. Lakin, Clerk. By Thos. S. Scott, Deputy. [38]

Defendant's Exhibit No. 1—Agreement, December 7, 1911, Between Cummings and Harper.

THIS AGREEMENT OF MINING OPTION,
Made and entered into this 7th day of December,
A. D. 1911,

BETWEEN J. M. Cummings, of Seward, Alaska,
the party of the first part, and Al. Harper, of the
same place, the party of the second part,

WITNESSETH: That the said party of the first
part, in consideration of the sum of One Dollar
(\$1.00), lawful money of the United States of Amer-
ica, paid to the party of the first part by the party
of the second part, the receipt whereof is hereby
acknowledged, and the further consideration of the
covenants and agreements on the part of the said
party of the second part, hereinafter contained,
agrees to sell and convey unto the said party of the
second part, his heirs and assigns, the following de-
scribed mining location, to wit:

THE BATTLE AXE ASSOCIATION PLACER
CLAIM situate on Thunder Creek, tributary to
Cache Creek, in Cook Inlet mining precinct, Terri-
tory of Alaska, comprising about One Hundred and
Sixty (160) acres,

For the Sum of Ten Thousand Dollars (\$10,000)
lawful money of the United States of America, to be
paid by the party of the second part to the party of
the first part, as follows, to wit:

The sum of Four Thousand Dollars (\$4000.00) on
or before January 15th, 1912,

And the further Sum of Three Thousand Dollars (\$3000.00) on or before July 15th, 1912,

And the further sum of Three Thousand Dollars (\$3000.00) on or before September 1st, 1912.

All deferred payments to be made at the Bank of Seward, Seward, Alaska.

In the event of failure to comply with any of the terms hereof by the said party of the second part, the said party of the first part shall be relieved from all obligations, in law or in equity, to convey said property, and shall have the immediate right [39] of possession, and the said party of the second part shall forfeit all right thereto, and all payments made thereon as full, complete and liquidated damages.

Upon the final payment by the party of the second part to the party of the first part, the party of the first part shall execute and deliver a proper deed of release and conveyance to the party of the second part, of said mining claim.

And it is further understood and agreed by and between the parties hereto, that should the said party of the second part fail to make any of the said deferred payments, at the time and in the manner herein provided, then said party of the first part, at his option, has the right to declare this agreement null and void, upon ten days' notice, in writing, to the party of the second part, filed with said Bank of Seward.

And *it understood* that the stipulations aforesaid are to apply to and bind the heirs, administrators, executors and assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, in duplicate, the day and year in this agreement first above written.

J. M. CUMMINGS. (Seal)

Witness to Sig. J. M. C.:

S. O. MORFORD,

CURTIS R. MORFORD.

Lewiston, Idaho, December 19, 1911.

For the sum of One Dollar (\$1.00) the receipt whereof is hereby acknowledged, and other valuable considerations, I hereby sell, assign, transfer and set over unto M. A. Ellis, the foregoing contract, or option, he assuming all the liabilities, covenants and obligations therein expressed *to kept* and performed by myself.

AL. HARPER.

Witnesses:

DWIGHT E. HODGE.

Defendant's Exhibit #1. S—49. [40]

**Defendant's Exhibit No. 2—Abstract of Title of
Battle Axe Association Group, etc.**

ABSTRACT OF TITLE OF THE BATTLE
AXE ASSOCIATION GROUP
AS APPEARS OF RECORD IN THE COOK IN-
LET PRECINCT,
THIRD DIVISION, TERRITORY OF ALASKA.
SEPTEMBER 7th, 1912.

Defendant's Exhibit No. 2. Cause S-49. [41]

POWER OF ATTORNEY.

From, Walter James, Eugene Morrison, John Pull-
man, Eri Thompson, D. E. Wallace, Fred Alex-
ander and M. B. Anthony to Joseph LeClair of
Seward, Alaska.

To locate, stake and record for us and each of us
lode claim, placer mining ground, coal claims, tim-
ber land, mill sites or any other valuable mining or
mineral lands in the Territory of Alaska, and hav-
ing located the same to bargain, sell, grant, release
and convey the same or any part thereof, entire or
in separate parcels, to make proper deeds, leases,
or other instruments in writing affecting the same,
to seal, sign and deliver the same to such person or
persons as our said Attorney may desire, to receive
and receipt in ours or each of our names any sum or
sums of money for the same as our said Attorney
may desire, hereby giving and granting unto our
said Attorney full power to do and perform all and
every act and thing whatsoever requisite and neces-
sary to be done in and about the premises as fully

to all intents and purposes as we might or could do if personally present, hereby ratifying and confirming all that our said Attorney shall lawfully do or cause to be done by virtue of these presents.

This Power of Attorney shall be in force and irrevocable for the period of five years.

Dated January A. D. 1906.

Signed:

WALTER JAMES.
EUGENE MORRISON.
JOHN PULLMAN.
ERI THOMPSON.
D. E. WALLACE.
FRED ALEXANDER.
M. B. ANTHONY.

Witnessed in presence of:

H. H. HILDRETH.

S. M. GRAFF.

Acknowledged before H. H. Hildreth, United States Commissioner, Third Division, Territory of Alaska, residing at Seward. Acknowledgment taken Jan. 23d, 1906.

Filed for record April 1, 1906, 2 P. M., and recorded in Vol. 1, Mining Locs., at page 246.

[Seal]

JOHN GOODELL,

Dist. Rec. [42]

NOTICE OF PLACER LOCATION.

Known as Battle Ax Group, on Thunder Creek a tributary of Cache Creek, Cook Inlet Precinct and Recording District, Third Div., Territory of Alaska.

Located Feb. 24th, 1906.

Filed for record April 1, 1906, 2 P. M. and recorded
in Vol. 1, page 249, Min. Locs.

Locators:

WALTER JAMES.

JOHN PULLMAN.

ERI THOMPSON.

D. E. WALLACE.

FRED ALEXANDER.

M. B. ANTHONY.

JOS. LeCLAIR.

EUGENE MORRISON.

By JOE LeCLAIR,

Attorney in Fact.

JOHN GOODELL,

Dist. Recorder. [43]

DEED OF MINING CLAIM.

This Indenture made this 14th day of January, 1908, between Walter James, Eugene Morrison, John Sullivan, Eri Thompson, D. E Wallace, Fred Alexander and W. B. Anthony, by their Attorney in fact Joe LeClair and Joe LeClair the parties of the first part, and John Sheridan of Seward, Alaska, the party of the second part.

Consideration \$100.00, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged.

Release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, the following described tract of land, situated, lying and being in the Cook Inlet Recording District,

Alaska, particularly bounded and described as follows, to-wit:

An undivided one half interest in and to that certain Association placer claim consisting of 160 acres known as the Battle Ax group, situated on Thunder Creek, a tributary of Cache Creek, a tributary of the Kahiltna River in the Cook Inlet Recording District, Alaska, the Location Notice of which dated Feb. 24, 1906, is recorded on page 249 of Book I—of Min. Loc. of said Recording District.

Signed:

WALTER JAMES. Seal.

EUGENE MORRISON. “

JOHN SULLIVAN. “

ERI THOMPSON. “

D. E. WALLACE. “

FRED ALEXANDER. “

W. B. ANTHONY. “

By Their Attorney in Fact,

JOE LeCLAIR.

JOE LeCLAIR. Seal.

Signed, Sealed and Delivered in Presence of:

WM. H. WHITTLESEY.

JOHN KUSTWIN.

Acknowledged Jan. 14th, 1908, at Valdez, Alaska, before Wm. H. Whittlesey, Notary Public, Ter. of Alaska, residing at Valdez. For Acknowledgment of this deed, see page 201.

Recorded Feb. 6th, 1908, at 4:30 P. M. in Vol. I of Deeds, at page 197, records of Cook Inlet Precinct.

(Seal)

J. GOODELL,

Dist. Rec. [44]

DEED.

Dated January 14th, 1908.

Between Walter James, Eugene Morrison, John Sullivan, Eri Thompson, D. E. Wallace, Fred Alexander, by their and each of their Attorney in fact Joe LeClair and Joe LeClair the parties of the first part and M. B. Anthony the party of the second part.

Consideration One Hundred Dollars lawful money of the United States to them in hand paid by party of second part, receipt acknowledged.

Forever Quit-Claim unto the party of the second part, his heirs and assigns the following lot, parcel or tract of land situated, lying and being in the Cook Inlet Recording District, Alaska, particularly described as follows, to wit:

All of their and each of their interest in and to that certain Association placer claim, consisting of 160 Acres, known as the Battle Ax Group, situated on Thunder Creek, a tributary of Cache Creek, a tributary of Kahiltna River in the Cook Inlet Recording District, Alaska, the location Notice of which Claim dated Feb.—14—1906 is recorded in Vol. I at Page 249 of Min. Loc., of the records of said Recording District.

Signed:

WALTER JAMES.	(Seal)
EUGENE MORRISON.	“
JOHN SULLIVAN.	“
ERI THOMPSON.	“
D. E. WALLACE.	“
FRED ALEXANDER.	“

By Their Attorney in Fact,
JOE LeCLAIR.

JOE LeCLAIR.

Witnesses:

WM. H. WHITTLESEY.
JOHN KUSTWIN.

Acknowledged Jan. 14th, 1908, before Wm. H. Whittlesey, Notary Public, Ter. Alaska, residing at Valdez.

Filed for record Feb. 6th, 1908, at 4:30 P. M., and recorded in Vol. I, Deeds, at page 198, Records of Cook Inlet Precinct and Recording Dist.

(Seal) J. GOODELL,
Dist. Recorder. [45]

DEED.

Dated Jan. 15, A. D. 1908.

Between W. B. Anthony of Seward, Alaska, party of first part, and Joe LeClair of Seward, Alaska, the party of the second part.

Consideration—One Hundred Dollars lawful money of United States to him in hand paid, receipt acknowledged, does hereby remise, release, and forever Quit-Claim unto the said party of the second part, his heirs and assigns the following described tract, lot or parcel of land, situated and lying

and being in the Cook Inlet Recording District, bounded and described as follows, to wit:

An undivided one half interest in and to that certain Association placer claim consisting of 160 acres known as the Battle Ax Group, situated on Thunder Creek a tributary of Cache Creek, a tributary of Kahiltna River in the Cook Inlet Recording District, Alaska, the loc. Notice of which claim dated Feb. 24, 1906, is recorded on page 249 of Book I of Min. Loc. of the records of said Recording District.

Signed:

M. B. ANTHONY.

Witnesses:

WM. H. WHITTLESEY.

ERI THOMPSON.

Acknowledged Jan. 15th, A. D. 1908, before Wm. H. Whittlesey, a Notary Public, Territory of Alaska, Residing at Valdez.

Filed for record March 6, 1908, at 2 P. M., and recorded in Vol. 1, Deeds, at page 209, Records of Cook Inlet Precinct.

[Seal]

J. GOODELL,
Dist. Rec. [46]

DEED.

Dated 6th day of March, A. D. 1908.

Between Joe LeClair and John Pullman, the parties of the first part, and Joe LeClair, Sr., of Detroit, Mich., the party of the second part.

Consideration—One Dollar of the United States of America, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, remise, re-

lease and forever Quit-Claim unto the said party of the second part, and to his heirs and assigns the following tract, parcel or lot of land situate, lying and being in the Cook Inlet Recording District, described as follows, to wit:

An undivided one half interest in and to that certain Association Mining Claim of 160 acres known as the Battle Ax, Situated on Thunder Creek, a tributary of Cache Creek in Cook Inlet Precinct, Alaska, the Location Notice of which claim being of record page 249 of Book I—records of said precinct.

Signed:

JOE LeCLAIR. Seal

JOHN PULLMAN. Seal

By JOE LeCLAIR,
Atty. in Fact.

Witnessed:

G. W. PALMER.

JOHN GOODELL.

Acknowledged March 6th, 1908, before John Goodell, U. S. Commissioner.

Filed for record March 6th, 1908, and recorded in Vol. I, Deeds, at page 210.

[Seal]

J. GOODELL,

Dist. Rec. Cook Inlet Precinct. [47]

DEED.

Dated March 3d, 1908.

Between John Sheridan of Seward, Alaska, the party of the first part, and Eri Thompson, the party of the second part.

Consideration.—One hundred dollars, Gold Coin

of the United States, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, released and forever Quitclaimed unto the said party of the second part, and to his heirs and assigns, the undivided one-half interest in and to that certain Association placer mining claim consisting of one hundred and sixty acres, known as the "Battle Ax" Group situated on Thunder Creek a tributary of Cache Creek, a tributary of Kahiltna River in the Cook Inlet Recording District, Territory of Alaska. The location Notice of which dated Feb. 24th, 1906, is recorded on page 249 of Book I of Mining Locations of Cook Inlet Recording Precinct, said Territory of Alaska.

Signed:

JOHN SHERIDAN. (Seal)

Witnessed:

S. O. MORFORD.

CURTIS R. MORFORD.

Acknowledged Third day March, 1908, before S. O. Morford, Notary Public, District of Alaska.

Filed for record Dec. 14, 1908, request of Eri Thompson at 11:50 A. M. and recorded in Vol. I, Deeds, at page 278.

[Seal]

H. S. FARRIS,
Recorder, Cook Inlet Precinct.

[48]

DEED.

Dated 11th day of July, 1908.

Between Joe LeClair, Sr., of Detroit, Michigan and Joe LeClair, Jr., of Susitna, Alaska, Attorney in fact, the parties of the first part, and Eri Thomp-

son, of Susitna, Alaska, the party of the second part, for and in consideration of the sum of One and no/100 Dollars Gold Coin of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged have granted, bargained, sold, remised, released and forever Quit-Claimed unto the said party of the second part, and to his heirs and assigns, the following described property, to wit: One-half interest (undivided) in and to that certain Association placer mining claim, consisting of one hundred and sixty acres known as "Battle Ax," situated on Thunder Creek, a tributary of Cache Creek, the Cook Inlet Recording Precinct, Territory of Alaska, the Location Notice of said claim is recorded on page 249, of Book I, records of said Precinct.

Signed:

JOE LeCLAIR, Sr. Seal.

By JOE LeCLAIR, Jr.

Attorney in Fact.

Witnessed:

JOHN SHERIDAN,

H. W. NAGLEY.

Not acknowledged.

Filed for record Dec. 14, 1908, at 11:50 A. M. at request of Eri Thompson and recorded in Vol. 1, Deeds, at page 279.

H. S. FARRIS,

Recorder.

QUITCLAIM DEED.

Dated 25th day of October, 1909.

Between Eri Thompson of Susitna, Alaska, the party of the first part, and J. M. Cummings, of Valdez, Alaska, the party of the second part:

Consideration, the sum of One (\$1.00) Dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever Quitclaim unto the said party of the second part, and to his heirs and assigns the following described property, situate, lying and being in Susitna Cook Inlet Precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer Mining Claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct; an undivided one-half interest in and to that certain Saloon situated in the town of Susitna, Alaska, known as Thompson and Price's Saloon; together with and including all fixtures, cigars and liquor license, and the lot or parcel of land whereon said Saloon is situated.

That certain log house adjacent to John Jones' bath house and lying between said bath house and the General Merchandise Store of H. W. Nagley in said Susitna; together with all fixtures and chattels therein contained, owned by said first party and also that certain log cabin situated in the rear of said log house with all chattels or other property therein contained.

To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever. [50]

Signed:

ERI THOMPSON, (Seal)

Witnessed:

H. S. FARRIS.

WILLARD Y. SCOTT.

Acknowledged 25th day of October, A. D. 1909, before H. S. Farris, a Notary Public in and for the Territory of Alaska, residing at Susitna.

Filed May 22, 1910, at 8:30 P. M., request Eri Thompson.

[Seal]

H. S. F.,
Recorder.

Recorded in Vol. 1, Deeds, at page 424, Records of Cook Inlet Precinct. [51]

United States of America,
Territory of Alaska,—ss.

I, the undersigned clerk of the District Court of the Territory of Alaska, Third Division, do hereby certify that the following is a full and correct copy of the original entry in the judgment docket, Volume I of the District Court Territory of Alaska, Third Division, as the same appears on page 260, at line 7, the same being of record in my office.

Judgment Debtor... Thompson Eri & Wallace Dave.
Judgment Creditor..... Meredith Thos. H.

Principal, \$1,598.80

Amt. of judgment: Interest, 8% from date until paid
Costs, \$32.65

Date of entry in Journal, April 25, 1910. Volume 5,
Page 824.

When docketed: April 29, 1910.

In testimony whereof, I have subscribed my name
and affixed the Seal of the Court at Valdez, Alaska,
this 29th day of April, 1910.

[District Court Seal]

Signed: ED. M. LAKIN,
Clerk.

By Thos. S. Scott,
Deputy.

Filed for record May 22, 1910, at 11:10 P. M., re-
quest of J. L. Reed.

H. S. FARRIS,
District Recorder.

Recorded in Volume 1, page 1, Orders and Judg-
ment Affecting Real Estate. [52]

RECEIPT.

\$4,000.00. Seward, Alaska.

Received of M. A. Ellis, per Charles and Al Har-
per, the sum of Four Thousand Dollars (\$4,000.00)
in full of payment due January 15th, 1912, upon that
certain contract entered into between J. M. Cum-
mings and Al Harper on the 7th day of December,
1911, for the sale of the Battle Axe Association
Placer Claim, situated on Thunder Creek, in the
Cook Inlet Mining Precinct, District of Alaska, con-
taining one hundred and sixty acres; said contract
having been duly assigned and transferred by the
said Al Harper to M. A. Ellis.

Signed: J. M. CUMMINGS.

Acknowledged, before Curtis S. Morford, a Notary

Public in and for the District of Alaska, residing at Seward.

Filed for record March 11th, 1912, at 3 o'clock P. M.

LEE VAN SLYKE,
Commissioner and Ex-officio Recorder, Susitna,
Alaska, Cook Inlet Precinct, Territory of
Alaska.

Recorded in Vol. 1, Miscellaneous, at page 41, Records of said Precinct. [53]

United States of America,
Territory of Alaska,
Cook Inlet Precinct.

I, the undersigned United States Commissioner and Ex-officio Recorder of the Cook Inlet Precinct and Recording District of Alaska, and the legal custodian of Notices of Location and the Records of Transfers of Mining Claims in said district,—

DO HEREBY CERTIFY: That the foregoing abstract of title to the Battle Axe Group of Placer Mining Claims, which abstract contains 12 sheets in all, numbered 1 to 12, inclusive, is full and correct title to said claim or any part of same which appears of record other than those set forth in the foregoing abstract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Susitna, Alaska, on this 7th day of September, A. D. 1912.

[Seal of U. S. Commissioner]

Signed: LEE VAN SLYKE,
U. S. Commissioner and Ex-officio Recorder. [54]

Defendant's Exhibit 3—Quitclaim Deed, February 28, 1913, Between Cummings and Ellis.

THIS INDENTURE, made the twenty-eighth day of February, in the year of our Lord one thousand nine hundred and thirteen, between J. M. CUMMINGS, of Seattle, Wash. (formerly of Valdez and Seward, District of Alaska), the party of the first part, and M. A. ELLIS, of Seattle, King County, Wash., the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten Thousand and 00/100 Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has sold, remised and forever quitclaimed, and by these presents does sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns the following described property situate, lying and being in the Susitna and Cook Inlet Precinct, Third Judicial Division, District of Alaska, more particularly described as follows to wit: That certain association placer mining claim, consisting of one hundred sixty (160) acres, known as the "Battle Ax Group" situated on Thunder Creek, a tributary to Cache Creek, a tributary to the Kahiltna River, in the Cook Inlet Recording Precinct, District of Alaska; the location notice of which dated February 24th, 1906, is recorded in Volume one (1) on page two hundred forty-nine (249), of Mining Locations, of the records of said Recording District.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. M. CUMMINGS. (Seal)

Signed, sealed and delivered in presence of:

ERI THOMPSON.

S. O. MORFORD. [55]

Province of British Columbia,

County of Caribas,

District of Lillooch,—ss.

I, Samuel Gibbs, a Notary Public for the Province of British Columbia, do hereby certify that on this twenty-eighth day of February, A. D. 1913, personally appeared before me J. M. Cummings to me known to be the individual described in and who executed the within instrument, and acknowledged that he executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 28th day of February, A. D. 1913.

SAMUEL GIBBS,

Notary Public in and for the Province of British
Columbia, Residing at Lillooch.

United States of America,

Territory of Alaska,

Third Division,—ss.

FILED FOR RECORD AT REQUEST of J. E.

Chapman of Thunder Creek Mining Co., on the 28th day of Mar., 1913, at 15 minutes past 8 A. M. and recorded in volume 2 Supp'l of Deeds, page 151 Records of Cook Inlet, Precinct Alaska.

LEE VAN SLYKE,

U. S. Commissioner and Ex-officio Recorder.

H. W. Nagley,

Deputy.

Defendant's Exhibit #3. S-49. [56]

**Defendant's Exhibit 4—Letter, October 11, 1912,
to Clerk of Court.**

October 11, 1912.

Clerk of Court,

Valdez, Alaska.

Dear Sir:—

The copy of complaint in Snooks vs. Thompson et al. just received. Enclosed please find my check for \$1.40 in payment of the same. As soon as you receive return of attachment, please send me a copy of the writ and the return, as I am informed an attachment has been placed upon the property at Susitna.

Very truly yours,

Defendant's Exhibit #4. S-49.

Exhibit—Letter, October 8, 1912, Lakin to Morford.

DEPARTMENT OF JUSTICE.

Office of
CLERK OF THE DISTRICT COURT.

For the Territory of Alaska,

Third Division.

Valdez.

Oct. 8th, 1912.

S. O. Morford, Esq.,
Seward, Alaska.

Dear Sir:

In compliance with your telegram of this date, I enclose herewith a certified copy of the complaint in cause #S-20.

As there has been no return of the Writ of Attachment, I am unable to send certified copy of that or the return.

The charge for the copy sent is \$1.40.

Yours very truly,

ED. M. LAKIN,

Clerk. [57]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S/49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

Opinion.

In August, 1912, William Snook and Karl Karlson commenced separate actions in this court against the defendant Thompson and one Dave Wallace for labor performed by them in the year 1907 for said Thompson and Wallace on the Battle Ax group of mining claims on Thunder Creek, Cook Inlet recording district, Alaska.

On July 14, 1914, judgment by default was recovered by J. L. Reed, substituted as plaintiff for said Karl Karlson against said Thompson and Wallace for the sum of \$822.30 and costs and on said July 14, 1914, judgment was rendered by default in favor of said Snook against said Thompson and Wallace for the sum of \$582.68 and said judgment was subsequently assigned to the plaintiff Reed, who brings this action to subject the said Battle Ax mining claim to the lien of two certain attachments levied upon said mining claim on the 22d day of September, 1912, in said actions brought by Snook and Karlson.

On the 25th day of October, 1909, the defendant, Eri Thompson, executed a conveyance, in form a quitclaim deed, to the defendant herein, J. M. Cummings, conveying the said Battle Ax mining claim and other property, which said deed was recorded in the office of the recorder at Susitna, in the Cook Inlet recording precinct, Alaska, May 22, 1910.

On April 25, 1910, the above-named plaintiff, J. L. Reed, recovered [58] a judgment against the defendant Eri Thompson and Dave Wallace for the sum of \$1,598.80 and costs, for work and labor per-

formed by plaintiff's assignors on the said Battle Ax mining claim in the year 1907 and on the 22d day of September, 1910, brought an action to set aside the said deed made by Thompson to Cummings on October 25, 1909, as fraudulent and made to hinder and delay creditors. This court adjudged said deed void for fraud. An appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and on the 3d day of February, 1913, said judgment was affirmed by said Circuit Court of Appeals. The decision in said cause, entitled Thompson et al. vs. Reed is found in the 202 Federal Reporter at page 870.

On December 7, 1911, said defendant Cummings granted an option to purchase said Battle Ax mining claim to one Al Harper for the sum of \$10,000 to be paid as follows: The sum of \$4,000 on or before January 15, 1912; the sum of \$3,000 on or before July 15, 1912, and the further sum of \$3,000 on or before September 1, 1912, payments to be made at the Bank of Seward, Alaska. On December 19, 1911, said Al Harper assigned all his interest in and to said option to the defendant M. A. Ellis.

The testimony shows that Ellis made the first payment of \$4,000 in February, 1912. The second payment of \$3,000 was made in August, 1912. The final payment of \$3,000 was made in February, 1913, and Cummings executed a deed to Ellis on February 28, 1913, for said Battle Ax mining claim.

This present action is brought to subject the said Battle Ax mining claim to the lien of said two attachments levied on the ground on September 22, 1912.

Said attachments were made by the special officer, by posting [59] certified copies of the writs of attachment in a conspicuous place on said mining claim.

Defendants claim that no lien was ever acquired thereby for the reason among others that no certificate was filed with the recorder in said precinct within ten days after the attachment as provided in section 974, Compiled Laws of Alaska. Said section reads:—

“If real property be attached, the marshal shall make a certificate containing the title of the cause, the names of the parties, a description of such real property, and a statement that the same has been attached at the action of the plaintiff, and the date thereof. Within ten days from the date of the attachment, the marshal shall deliver such certificate to the commissioner as ex-officio recorder of the recording district in which said real property is situated, who shall file the same in his office and record it in a book to be kept for that purpose. When such certificate is so filed for record the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against third persons, from the date of such subsequent filing. * * ”

If Thompson owned the ground, however, or had any interest therein, it would seem that such attachments would bind his interest, whether or not the notice was filed as provided in section 974.

Plaintiff alleges in his amended complaint that the defendant Ellis had full notice and knowledge of the fraudulent character of the deed from Thompson to Cummings and of plaintiff's claims and attachment. If this be true, it would seem that he, Ellis, stood in no different position from Cummings.

Defendant Ellis, by his answer, denies that he had any such notice or knowledge, but his own testimony clearly shows that he knew of the action pending to declare said deed from Thompson to Cummings void; that he paid over a considerable portion of the purchase price owing to Cummings to a trustee, to be held pending the final determination of said action, and that when said action was finally determined adversely to Cummings, said money was paid to the plaintiff Reed in satisfaction of the former judgment.

It also appears from the testimony of Ellis that plaintiff's [60] assignor, Snook, wrote to Ellis on July 14, 1912, asking him about his payments to be made to Cummings, and notifying Ellis that he, Snook, was also a creditor of Thompson's for labor done on said mining claim, and that he wanted to collect his money. On August 10, 1912, Ellis acknowledged receipt of said letter and wrote Snook that the last payment on said motion was to be made October 15th, and further wrote:— "I believe if you are one of those interested in the judgment (referring to the Reed judgment, on appeal) you will be protected; if not, I would advise you to sue and get judgment."

Ellis' own testimony also shows that he left the

Battle Ax mining claim, upon which he had been working during the season of 1912, on or about September 3, 1912, and came out to Seward, on the coast, two or three hundred miles distant. While in Seward, in October, 1912, he was informed that notices had been posted on the ground. He testified that he met a man who had worked on the ground, who told him that Henry Behrenberg (the special officer) had posted up a notice on said Battle Ax mining claim, near the camp or cache of said Ellis, but that he did not know just what the notice was, except that it seemed to be some suit filed by Snook against Thompson and Wallace. He says he wrote back to Nagley or Van Slyke, he is not sure which one of them was Commissioner at Susitna Station (a long distance from this ground) and received back a letter, saying that a suit had been started for wages against Thompson and Wallace, and that "it had nothing to do with me" (Ellis). He says he did not go to the ground or send any one there to ascertain what the notices were, but relied upon this letter and upon the advice of S. O. Morford, attorney for defendant Ellis in this case. He also says he relied upon an abstract of title dated September 7, 1912.

It would thus seem that Ellis, while not chargeable with the constructive notice provided for in section 974, that is, by the [61] filing of the certificates of the attachment in the commissioner's or recorder's office, had actual notice and knowledge of the whole affair—of the attack on the deed from Thompson to Cummings; the suit then pending on

appeal; the fact that Snook had a claim for wages against Thompson for work on said ground in 1907, for which he himself had advised Snook to bring suit and get judgment; and such notice of posting on the ground, in view of all the circumstances in this case, was not only sufficient to put him on inquiry, but brought home to him actual notice of plaintiff's rights. And if it be contended that all of these circumstances did not constitute "express" actual notice, it would still be gross or culpable negligence on Ellis' part not to have ascertained the facts as to the Snook claim, before he made the final payment and took the deed from Cummings. (See *Tobey vs. Kilbourne*, 222 Federal, 764.) He had not yet secured his deed from Cummings, nor made the final payment, out of which he could have amply protected himself, and still have regard for the rights of others.

It is difficult to see how Ellis stands in any different position from Cummings, and Cummings' deed from Thompson was declared void as to creditors. Ellis knew that such was the final judgment and that it was his money that paid the creditors of Thompson, and all this before he made his final payment or received his deed.

It would seem as though Ellis was honest in his belief and that his was a mistake of law, but this cannot relieve him from liability to those who were bona fide creditors of Thompson's, with whom Ellis was in privity as to this mining claim, and had notice and knowledge of their rights.

In the case of *Bank of Colfax vs. Richardson*, 34

Oregon, at page 540, Mr. Justice Bean, in a carefully considered opinion, says: [62]

“And, finally, it is contended that the judgments upon which this suit was brought are void because the attached property had been transferred by the Richardsons to their codefendants before the commencement of the several actions at law, and hence it is claimed that they had no interest therein which could be seized on attachment, and so the court did not obtain jurisdiction to render any judgment whatever. A sufficient answer to this position is that the complaint in this suit avers that such transfer was made for the purpose of defrauding creditors, and as to the plaintiff it is, therefore, only an apparent, and not a real transfer. As to it, the land still belonged to the fraudulent grantor, and was as much subject to attachment as though the fraudulent deed had never been made: *Waples*, Attachm. Sec. 249; *Mulock v. Wilson*, 19 Colo. 296 (35 Pac. 532); *Keene v. Sallenbach*, 15 Neb. 200 (18 N. W. 75); *Williams v. Michenor*, 11 N. J. Eq. 520; *Greenway v. Thomas*, 14 Ill. 271; *Dewey v. Eckert*, 62 Ill. 218.”

In *Bouvier's Law Dictionary*, (Rawle's Third Revision) in Volume 3, page 2368, under the heading “Notice,” it is said:

“Actual notice exists when knowledge is actually brought home to the party to be affected by it. This statement is criticised, as being too narrow, in *Wade*, Notice 4. This writer divides

actual knowledge into two classes, express and implied; the former includes all knowledge of a degree above that which depends upon collateral inference, or which imposes upon the party the further duty of inquiry; the latter imputes knowledge to the party because he is shown to be conscious of having the means of knowledge, though he does not use them, choosing to remain ignorant of the fact, or is grossly negligent in not following up the inquiry which the known facts suggest; Wade, Notice 5."

I believe the knowledge which Ellis is shown by his own testimony to have had is such as to bring him within the first named class, that of "express" knowledge or notice.

The plaintiff is entitled to have said Battle Ax mining claim subjected to the lien of his judgment in this case, by virtue of his attachments, and the property sold to satisfy the same.

Findings and decree may be so prepared.

Dated this 18th day of November, 1915.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 370. [63]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Findings of Fact and Conclusions of Law.

It appearing to the satisfaction of the Court by the proofs on file herein that service of summons herein was duly made on the defendant Eri Thompson by publication and the default of said Eri Thompson for pleading or other appearance having been entered herein on the 4th day of June, 1915, and that personal service of the amended complaint was made on the defendants M. A. Ellis and J. M. Cummings and that the said M. A. Ellis and J. M. Cummings having filed their separate answers and that upon the issues joined by the pleadings herein and this cause coming on regularly for trial on the 12th day of November, 1915, and E. E. Ritchie and J. L. Reed appearing as counsel for the plaintiff and S. O. Morford and J. J. Finnegan appearing for the defendant M. A. Ellis and the defendant J. M. Cummings having failed to appear at the trial, the case was tried before the Court, whereupon documentary evidence was then introduced by the plaintiff and the following witnesses were then duly sworn and

testified for and on behalf of the plaintiff, to wit, J. L. Reed, Andrew Beck and Henry Bahrenburg; thereupon, documentary evidence was introduced by and the following witnesses duly sworn and testified for and on behalf of the defendant M. A. Ellis, to wit, M. A. Ellis and S. O. Morford, and the evidence being closed and arguments of counsel heard and the Court being fully advised in the premises, now makes the following findings of fact and conclusions of law herein:

FINDINGS OF FACT:

I.

That on August 7th, 1912, William C. Snook filed an action in this court against the defendant Eri Thompson and one Dave Wallace to recover upon a claim of indebtedness and caused a writ of attachment [64] to be issued out of the clerk's office of said court and thereafter, to wit, on the 22d day of September, 1912, duly levied by the United States marshal upon said Battle Axe mining claims as the property of the defendant Eri Thompson, that thereafter the certificate of said levy was duly filed in the office of the commissioner and recorder in which said claim is situated on the 25th day of July, 1914, and that on the 14th day of July, 1914, judgment was duly entered in this court in favor of the said William C. Snook and against Eri Thompson and Dave Wallace for the sum of \$582.68 with interest accrued and accruing costs and that thereafter said judgment was duly assigned to J. L. Reed, the plaintiff herein.

II.

That on August 14th, 1912, Karl Karlson filed an

action in this court against the defendant Eri Thompson and one Dave Wallace to recover upon a claim of indebtedness and caused to be issued on the same day in said action a writ of attachment, and that thereafter, to wit, on the 22d day of September, 1912, the United States marshal duly levied upon said Battle Axe mining claim as the property of said Eri Thompson, that the certificate of said levy was duly filed in the office of the commissioner and recorder of the precinct in which said claim is situated on the 25th day of July, 1914; that on the 13th day of July, 1914, an assignment of said Karl Karlson's right of action was filed and on the 14th day of July, 1914, pursuant to said attachment a judgment was duly entered in this court in favor of the said J. L. Reed, and against the said Eri Thompson and Dave Wallace for the sum of \$822.30 with interest and accrued and accruing costs and for the sale of the interest of the said Eri Thompson in said attached property to pay said judgment.

III.

That the indebtednesses upon which said judgments are based is for work and labor performed upon the Battle Axe mining claim by the plaintiff's assignors, Snooks and Karlson, during the years 1906 and 1907.

IV.

That on the 25th day of October, 1909, the defendant, Eri [65] Thompson, executed a conveyance, in form a quitclaim deed, to the defendant herein, J. M. Cummings, conveying the said Battle Axe mining claim and other property, which said deed was recorded in the office of the recorder at Susitna, in

the Cook Inlet recording precinct, Alaska, on May 22d, 1910, at 8:30 P. M.

V.

That on the 25th day of April, 1910, the above-named plaintiff, J. L. Reed, recovered a judgment against the defendant Eri Thompson and Dave Wallace for the sum of \$1,598.80 and costs, for work and labor performed by plaintiff's assignors on the said Battle Axe mining claim in the year 1907, and on the 22d day of September, 1910, brought an action to set aside the said deed made by Thompson to Cummings on October 25, 1909, as fraudulent and made to hinder and delay creditors and that this Court adjudged said deed void for fraud. That an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and on the 3d day of February, 1913, said judgment was affirmed by said Circuit Court of Appeals.

VI.

That on the 7th day of December, 1911, said defendant Cummings granted an option to purchase said Battle Axe mining claim to one Al Harper for the sum of \$10,000.00, to be paid as follows: The sum of \$4,000.00 on or before January 15, 1912; the sum of \$3,000.00 on or before July 15th, 1912, and the further sum of \$3,000.00 on or before September 1st, 1912, payments to be made at the Bank of Seward, Alaska. That on December 19, 1911, said Al Harper assigned all his interest in and to said option to the defendant M. A. Ellis. That the final payment of \$3,000.00 was made on the 28th day of February, 1913, on which day Cummings executed and delivered a deed to Ellis for said Battle Axe mining

claim, which said deed was filed for record in the office of the recorder of the Cook Inlet recording precinct, Territory of Alaska, on the 28th day of March, 1913.

VII.

That Dave Wallace departed from the Territory of Alaska on [66] or about the month of October, 1907, and that he has not returned to the said Territory of Alaska since said date and that he has no property, real or personal, in said Territory out of which plaintiff could satisfy his judgment.

VIII.

That said conveyance dated October 25th, 1909, conveyed all the property, real and personal, of the defendant Eri Thompson, in the Territory of Alaska, out of which plaintiff could satisfy his judgment herein and was made with intent to defraud the creditors of the said Eri Thompson to wit, the plaintiff's assignors, William C. Snooks and Karl Karlson, and that there was no consideration for the same.

IX.

That the defendant M. A. Ellis had actual notice and knowledge of the fraud and fraudulent intent and all the facts affecting the validity and rendering void the title of his immediate grantor J. M. Cummings as to the plaintiff's rights herein, on and prior to the 28th day of February, 1913.

X.

That the defendant M. A. Ellis had actual notice and knowledge of plaintiff's lien and rights thereunder by virtue of his attachments and levy of attachments of said Battle Axe mining claim on the

22d day of September, 1912, on and prior to the 28th day of February, 1913.

XI.

That the said Dave Wallace and Eri Thompson are insolvent. [67]

CONCLUSIONS OF LAW:

I.

That the conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, conveyed all the property, real and personal, of the defendant Eri Thompson and was made with the intent to hinder, delay and defraud the creditors of Eri Thompson and the plaintiff's assignors herein to wit, William C. Snook and Karl Karlson and this plaintiff and for which there was no valuable consideration, and that said conveyance is null and void against plaintiff's judgments in causes S-20 and S-21 entitled William C. Snook vs. Eri Thompson and Dave Wallace and Karl Karlson vs. Eri Thompson and Dave Wallace and is null and void as against plaintiff in this action.

II.

That on and prior to the 28th day of February, 1913, the defendant M. A. Ellis had actual notice and knowledge of the fraud and fraudulent intent and all facts affecting the validity and rendering void the title of his immediate grantor J. M. Cummings and of the conveyance dated the 25th day of October, 1909, as affecting plaintiff's rights herein.

III.

That on and prior to the 28th day of February, 1913, the defendant M. A. Ellis had actual notice and knowledge of plaintiff's lien and rights there-

under by virtue of his attachments and levy of attachments of and on said Battle Axe mining claim on the 22d day of September, 1912.

IV.

That the plaintiff has a lien against the real property described in the conveyance executed by Eri Thompson to J. M. Cummings, dated the 25th day of October, 1909, described as follows: situate, lying and being in Susitna, Cook Inlet precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe [68] located on Thunder Creek, a tributary of Cashe Creek, in Cook Inlet mining and recording precinct, by virtue of plaintiff's judgments, attachments and levy of attachments in causes S-20 and S-21, heretofore mentioned, as of and from the date of said levy of attachments, to wit, on the 22d day of September, 1912, and that said liens are superior to and unaffected by the said conveyance between Eri Thompson and J. M. Cummings dated the 25th day of October, 1909, and are superior to and unaffected by said conveyance from J. M. Cummings to M. A. Ellis, dated the 28th day of February, 1913, and recorded in the office of the recorder of Cook Inlet recording precinct, Territory of Alaska, on the 28th day of March, 1913.

V.

That plaintiff has no plain, speedy or adequate remedy at law.

Done in open court at Valdez, Alaska, this 1st day of December, 1915.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 1, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 432. [69]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Judgment.

This cause came on for hearing on the 12th day of November, 1915, and was heard upon the amended complaint, answers, reply, exhibits and proof in the cause and the arguments of counsel and the cause was submitted to the Court for consideration and decision and after deliberation thereon and the Court having rendered its decision therein, files its findings of fact and conclusions of law in writing:

Wherefore, it is by the Court ordered, adjudged and decreed that the conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings purporting to convey to J. M. Cummings the following described property, situate, lying and being in Susitna, Cook Inlet precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct, was made with intent to hinder, delay and defraud the creditors of the said Eri Thompson and is null and void as against plaintiff's judgments, attachments, and levy of attachments in causes No. S-20, entitled William C. Snook vs. Eri Thompson and Dave Wallace, and No. S-21, entitled Karl Karlson vs. Eri Thompson and Dave Wallace and as against plaintiff as assignee of said causes of action.

It is further ordered, adjudged and decreed that plaintiff be given and he is hereby adjudged to have a valid lien under said judgments in said causes S-20 and S-21 by virtue of the same and his attachments and levy of attachments upon the following described real property described in said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M. Cummings, described as [70] follows, to wit, situated and lying and being in Susitna, Cook Inlet precinct, Third Judicial Division, Territory of Alaska, particularly described as follows, to wit:

That certain placer mining claim known as the Battle Axe, located on Thunder Creek, a tributary of Cache Creek, in Cook Inlet Mining and Recording Precinct; and that said lien commences and dates from the 22d day of September, 1912, and that said described real property be and is subject to plaintiff's lien and that the execution, filing and recording of said purported conveyance dated the 25th day of October, 1909, executed by Eri Thompson to J. M.

Cummings be and is hereby cancelled, vacated and set aside in so far as the same conflicts with plaintiff's judgments, attachments, levy of attachments, rights, equities or plaintiff's lien thereunder and that the same are unaffected by and are superior to said conveyance:

It is further ordered, adjudged and decreed that the defendant M. A. Ellis had notice and knowledge of the fraud affecting the validity of the conveyance dated the 25th day of October, 1909, between Eri Thompson and J. M. Cummings, and of the fraudulent intent of his immediate grantor J. M. Cummings and of plaintiff's liens, equities and rights by virtue of his judgments, attachments and levy of attachments in causes S-20 and S-21 and that the execution, filing and recording of said conveyance dated the 28th day of February, 1913, between J. M. Cummings and M. A. Ellis is hereby vacated and set aside in so far as the same conflicts with plaintiff's judgments, attachments, levy of attachments, rights, equities or plaintiff's lien thereunder and that the same are superior to and unaffected by said conveyance.

And it is further ordered, adjudged and decreed that the plaintiff in this action is at liberty to proceed by executions to be issued upon the judgments rendered in said causes Nos. S-20 and S-21 heretofore mentioned or to issue another execution and combine in one execution the principal and interest, accrued and accruing costs, attorneys fees and costs of suits and sale and disbursements in said causes Nos. S-20 and S-21 and of and in this action, as he

may be advised; and [71] should plaintiff so elect to proceed under one execution he shall after deducting the expenses of sale, costs, disbursements and attorneys' fees of this action apply the surplus to the satisfaction of his judgments in said causes Nos. S-20 and S-21 pro rata.

Judgment is also rendered against said defendants and each of them for the costs, accrued and accruing costs, attorneys' fees and disbursements of this action, taxed at \$——, for which execution will issue.

Done at Valdez, Alaska, this 1st day of December, 1915, in open court.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 1, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 435. [72]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Order Granting Extension of Time in Which to File
Bill of Exceptions.**

Now on this day on the Court's own motion,—

IT IS ORDERED that the defendants have 90 days from the date of the rendition of the judgment, in which to prepare and file a Bill of Exceptions in this cause.

Dated at Valdez, Alaska, this 30th day of November, 1915, as of date November 18, 1915.

FRED M. BROWN,
District Judge.

February, 1915, Term—November 30, 1915—131
Court Day. Tuesday.

Entered Court Journal No. 9, page No. 423.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Nov. 30, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [73]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 1, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, J. M. CUMMINGS and M. A.
ELLIS,

Defendants.

Memorandum of Costs and Disbursements.**DISBURSEMENTS:**

Marshal's Fees.....	\$——
Clerk's Fees....	\$20.40
Witness Fees: Andrew Beck, one day.....	\$——
Henry Bahrenburg, one day.....	\$ 8.00
Publication of Summons.....	\$17.00
Half Reporter's fee, one day.....	\$ 5.00
Docket Fees: Attorney's trial fee.....	\$20.00
<hr/>	
Total.....	\$70.40

United States of America,
Territory of Alaska,
Third Division,—ss.

E. E. Ritchie, being duly sworn, deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled cause, and as such is better informed relative to the above costs and disbursements, than the said plaintiff. That the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

E. E. RITCHIE.

Subscribed and sworn to before me, this 1st day of December, A. D. 1915.

[Seal]

JOS. L. REED,
Notary Public.

My commission expires April 28, 1918. [74]

To S. O. Morford and J. J. Finnegan, Attorneys for
Defendants:

You will please take notice that on Tuesday, the
7th day of December, A. D. 1915, at the hour of 10
o'clock A. M., plaintiff will apply to the clerk of said
court to have the within memorandum of costs and
disbursements taxed pursuant to the rule of said
Court, in such case made and provided.

J. L. REED, and

E. E. RITCHIE,

Attorneys for Plaintiff.

Service of within memorandum of costs and dis-
bursements, and receipt of a copy thereof acknowl-
edged, this — day of —, A. D. 190—.

_____,
Attorney for _____.

Costs in S-20.... ..\$32.90

Costs in S-21.... ..\$33.85

[Endorsed]: No. S-49. In the District Court, for
the Territory of Alaska, Third Division. J. L. Reed,
Plaintiff, vs. M. A. Ellis et al., Defendants. Mem-
orandum of Costs and Disbursements.

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Motion for New Trial.

Now comes the defendant, M. A. Ellis, by his attorneys, S. O. Morford and J. J. Finnegan, and moves this Court to set aside the decision rendered by the Court in this action and to grant a new trial of this cause upon the following grounds:

I.

That the evidence was insufficient to justify the decision in this: That the plaintiff wholly failed to establish that the defendant Ellis had any implied or express notice of any fraud rendering void the title of his immediate grantor, J. M. Cummings; that plaintiff wholly failed to establish any fraudulent intent upon the part of said Cummings in relation to the conveyance to Ellis.

That said decision is against law in this: It is admitted that the only information Ellis ever received relating to any claim of Snooks against Wallace and Thompson is contained in the Snook's letter (Plaintiff's Exhibit "G.") Said letter does not constitute either implied or express notice. Said decision is against law in this: There was no evidence adduced that Ellis ever knew of any claim of Karlson against Thompson and Wallace. Further, there was no evidence whatsoever adduced that Ellis ever knew, or should have known, that the deed from Thompson was adjudged fraudulent in respect to creditors.

II.

Errors in law occurring at the trial and excepted to by [75] defendant Ellis at the time, to wit:

I. The Court erred in admitting evidence over the objection of defendant of

a. The record in the case of Reed vs. Thompson et al.

b. The Transcript of record on appeal in the case of Reed vs. Thompson et al.,

c. The records in the Snooks and Karlson cases,

for the reason that the two first mentioned records were in no manner binding upon this defendant, and that in the last mentioned the record therein was void for want of jurisdiction.

II. The Court erred in denying defendant's motion for nonsuit.

Dated this 18th day of December, 1915.

S. O. MORFORD,

J. J. FINNEGAN,

Attorneys for Defendant Ellis.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 20, 1915. Arthur Lang, Clerk. By Robert L. Wever, Deputy. [76]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Minute Order Denying Motion for New Trial.

Now, on this day the motion for a new trial in this cause came on for hearing; E. E. Ritchie and J. L. Reed appearing as attorneys for the plaintiff, and J. J. Finnegan and S. O. Morford appearing as attorneys for the defendants and on behalf of motion and after arguments had, and the Court being fully advised in the premises,

IT IS ORDERED, that said motion be and the same is hereby denied, to which order and ruling of the Court, defendants except and exception is allowed.

February, 1916, Term—March 18th—27th Court Day, Saturday.

Entered Court Journal No. 10, page 24. [77]

*In the District Court for the Territory of Alaska,
Third Division.*

S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, J. M. CUMMINGS and M. A.
ELLIS,

Defendants.

Objections to Allowance of Disbursements.

Comes now the defendant M. A. Ellis by his attorneys, S. O. Morford and J. J. Finnegan, and objects to the allowance of certain disbursements requested by plaintiff herein, as follows, to wit:

1. The allowance of the sum of \$17.00 for the publication of summons, for the reason that defend-

ant Ellis was personally served with summons in the above-entitled cause, and made his appearance therein within thirty (30) days after such service.

2. Defendant Ellis objects to the allowance of the sum of \$20.00 for attorney's trial fee therein, for the reason that there is no legal or statutory authority therefor.

S. O. MORFORD and

J. J. FINNEGAN,

Attys. for Defendant M. A. Ellis.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 7, 1915. Arthur Lang, Clerk. By Robert L. Wever, Deputy. [78]

*In the District Court for the Territory of Alaska,
Third Division.*

S-49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

Minute Order on Objection to Cost Bill.

Now, on this day, the objection to certain items in the cost bill filed by the plaintiff came on to be heard, J. L. Reed and E. E. Ritchie appearing as attorneys for the plaintiff and J. J. Finnegan and S. O. Morford appearing as counsel for the defendant and after arguments had and the Court being fully advised in the premises,

IT IS ORDERED that the objection to the charge of \$17.00 for publication of summons be and the same is hereby overruled, and the objection to the attorneys' fee of \$20.00 is taken under advisement, the Court's decision to be rendered at a later date.

February, 1916, Term—March 18th—27th Court Day, Saturday.

Entered Court Journal No. 10, page No. 24. [79]

*In the District Court for the Territory of Alaska,
Third Division.*

S.-49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

**Minute Order Overruling Objection to Attorney's
Fee Taxed in Cost Bill.**

This matter having been heard on a day heretofore and the Court having taken said matter under advisement, now ordered that objection to the attorney's fee, taxed in the cost bill in this cause, be and the same is hereby overruled.

February, 1916, Term—March 31—37th Court Day, Friday.

Entered Court Journal No. 10, page No. 51. [80]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S.-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to Prepare and File
Bill of Exceptions to March 20, 1916.**

Now, on this day, on motion of S. O. Morford, attorney for the defendants: Lyons & Ritchie and J. L. Reed, appearing as attorneys for the plaintiff and consenting thereto,—

IT IS ORDERED that the defendants have until March 20, 1916, to prepare and file the Bill of Exceptions in this cause.

February 21, 6th Court Day, Monday—February, 1916, Term.

Entered Court Journal No. 9, page 480. [81]

*In the District Court for the Territory of Alaska,
Third Division.*

S.—49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to File Bill of
Exceptions to March 20, 1916, etc.**

On application of defendant, M. A. Ellis, by his attorney, S. O. Morford, for an extension of time to serve and file his bill of exceptions in the above-entitled matter, and good cause appearing to the Court therefor, and it further appearing that the Court heretofore had entered an order giving said Ellis until the 20th day of March, 1916, in which to serve and file his bill of exceptions and that said time has not yet expired, it is ordered that the defendant Ellis have to and including the 15th day of April, 1916, in which to prepare, serve and file his bill of exceptions herein.

Dated this 18th day of March, 1916.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 18, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, page No. 25. [82]

*In the District Court for the Territory of Alaska,
Third Division.*

S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to File and Settle
Bill of Exceptions to April 18, 1916.**

Now, on this day, on motion of J. J. Finnegan and
S. O. Morford, attorneys for the defendants,

IT IS ORDERED that the defendants have until
Tuesday, April 18th, 1916, in which to file and settle
bill of exceptions in this cause.

February, 1916, Term—April 14th—49th Court
Day, Friday.

Entered Court Journal No. 10, page No. 69. [83]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to File and Settle Bill
of Exceptions to April 19, 1916.**

Now, on this day, on motion of J. J. Finnegan and
S. O. Morford, attorneys for defendants,

IT IS ORDERED that the defendants have until
Wednesday, April 19, 1916, in which to file and settle
Bill of Exceptions in the above-entitled cause.

February, 1916, Term—April 18th—52d Court
Day, Tuesday.

Entered Court Journal No. 10, page No. 77. [84]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to File and Settle
Bill of Exceptions to April 20, 1916.**

Now, on this day, on motion of J. J. Finnegan and
S. O. Morford, attorneys for the defendants,

IT IS ORDERED that the time to file and settle
bill of exceptions in this cause be extended to April
20, 1916.

February, 1916, Term—April 19th—53d Court
Day, Wednesday.

Entered Court Journal No. 10, page No. 81. [85]

*In the District Court for the Territory of Alaska,
Third Division.*

S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

**Minute Order Extending Time to File and Settle
Bill of Exceptions to April 21, 1916.**

Now, on this day, on motion of J. J. Finnegan and
S. O. Morford, attorneys for the defendants,

IT IS ORDERED that the time in which to file
and settle Bill of Exceptions in this cause be ex-
tended to April 21, 1916.

February, 1916, Term—April 20th—54th Court
Day, Thursday.

Entered Court Journal No. 10, page No. 86. [86]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

**Petition for Allowance of Appeal, and Assignment
of Errors.**

To The Honorable FRED M. BROWN, Judge of the
Above-named Court:

Comes now M. A. Ellis, a defendant in the above-
entitled cause, and, feeling himself aggrieved by the
proceedings had therein in the above-entitled court,
and by the judgment rendered and entered therein
by said Court on the 1st day of December, 1915, de-

creeing to the plaintiff in said cause certain relief of an equitable nature against said defendant as therein fully set forth, and further rendering judgment in said plaintiff's favor against said defendant for costs taxed at the sum of \$——, hereby appeals from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, and he humbly petitions the above-named District Court for an order allowing his said appeal and fixing the amount of security for the costs of said appeal, to be given by said appellant thereon, and also fixing the amount of a separate bond to be given by him thereon, in order to supersede the effect and enforcement of said judgment appealed from pending the hearing and determination of said appeal.

And said defendant and appellant specifies the following as the errors upon which he will rely on his said appeal, to wit: [87]

ASSIGNMENT OF ERRORS.

1.

That the above-named District Court erred in overruling the demurrer of said defendant Ellis to the amended complaint of plaintiff in said cause.

2.

That said Court erred in its ninth Finding of Fact, in finding that defendant Ellis had actual notice and knowledge of the fraud and fraudulent intent and all the facts affecting the validity and rendering void the title of his immediate grantor, J. M. Cummings, prior to February 28, 1913.

3.

That said Court erred in its tenth Finding of Fact,

in finding that defendant Ellis had actual notice and knowledge of any claim of lien or right of plaintiff by virtue of his attachments and levy thereof, prior to February 28, 1913.

4.

That said Court erred in making its second Conclusion of Law, that defendant Ellis had actual notice and knowledge of the fraud and fraudulent intent of his immediate grantor, Cummings, and of the prejudice to plaintiff's right thereby.

5.

That said Court erred in making its third Conclusion of Law, that defendant Ellis had actual notice and knowledge of any of plaintiff's lien or rights therein. [88]

6.

That said Court erred in making its fourth Conclusion of Law, that plaintiff has a lien against the real property therein described, and that said liens are superior to defendant's rights therein.

7.

That said Court erred in entering judgment against said defendant Ellis.

8.

That said Court erred in overruling defendant Ellis' motion for a new trial.

9.

That said Court erred in overruling defendant

Ellis' objection to the allowance of attorney's trial fee of Twenty Dollars.

S. O. MORFORD and
J. J. FINNEGAN,
Attorneys for Appellant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 21, 1916. Arthur Lang, Clerk. By A. P. Geraghty, Deputy. [89]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, J. M. CUMMINGS and M. A.
ELLIS,

Defendants.

**Order Allowing Withdrawal of Assignment of
Errors, etc.**

On stipulation of parties made in open court consenting thereto, and for good cause shown, it is hereby ordered that the certain Assignment of Errors, heretofore on the 14th day of April, 1916, filed in the above action, be withdrawn from the files herein, and that the attached Assignment of Errors be filed in lieu thereof, and as of the date of April 14th, 1916.

Done in open court this 21st day of April, 1916.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 21, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, page No. 93. [90]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

**Order Allowing Appeal and Fixing Amount of Bond
for Costs and Amount of Bond for Supersedeas
on Appeal.**

M. A. Ellis, the defendant in the above-entitled cause, having this day filed in the above-named court his petition for allowance of an appeal on his part from the judgment rendered and entered therein by said Court on the 1st day of December, 1915, with his assignment of errors upon which he will rely on said appeal, appended to said petition, and having presented his said petition and assignment of errors to the undersigned District Judge, presiding in said court, and moved thereon for an order allowing said appeal and fixing the amount of security for the costs of said appeal to be given by him thereon, and also fixing the amount of security for costs and damages

of said appeal to be given by him thereon in order to operate as a supersedeas of said judgment pending the determination, in case the same shall be directed, and the undersigned having considered said petition and being fully advised in the premises;

On motion of Messrs. S. O. Morford and J. J. Finnegan, attorneys for defendant and appellant, it is ordered as follows:

First, that the appeal of said defendant prayed for in his petition be and the same is hereby allowed;

Second, that the amount of the bond to be given by said appellant for the costs of said appeal (but not to operate as a supersedeas) be and it hereby is fixed at the sum of \$500.00, and that upon the filing of a bond for costs on said appeal in said sum conditioned as prescribed by the statute in such case made and provided and approved by the undersigned, said appeal shall become effective; [91]

Third, that the amount of a further bond thereafter to be given by said appellant for the costs and damages of said appeal, in order to operate as a supersedeas of said judgment pending the determination of said appeal, in case he shall be directed to give such supersedeas bond, be and it hereby is fixed at the sum of \$2,000.00, and that upon the filing of such supersedeas bond in said sum, conditioned as prescribed by statute in such case made and provided and approved by the undersigned, within the time prescribed by law for a supersedeas on appeal, further proceedings upon said judgment shall be stayed until the determination of said appeal and the filing of a mandate thereon in this court. Bonds to be

given on or before May 21st, 1916, to be approved by the clerk of the court.

Done in open court this 21st day of April, 1916.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 21, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 10, page No. 90. [92]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON and M. A. ELLIS,

Defendants.

Bill of Exceptions and Transcript of Evidence.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard at Seward, Alaska, on Friday the 12th day of November, 1915, at 10 o'clock A. M., before the Honorable FRED M. BROWN, Judge of said court:

The plaintiff appearing in his own behalf and also by his attorney and counsel, E. E. Ritchie, Esq.;

The defendants appearing by their attorneys and counsel, S. O. Morford, Esq., and J. J. Finnegan, Esq.:

An opening statement was made to the Court by Mr. Reed in his own behalf:

Whereupon the following additional proceedings were had and done, to wit:

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 21, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [93]

Index.

PLAINTIFF'S CASE.	DEFENDANT'S CASE.
REED, J. L. 2	ELLIS, M. A. 12
BECK, ANDREW 4	Cross 18
Cross 6	MORFORD, S. O. 34
BEHRENBURG, H. 9	Cross 38

Testimony of J. L. Reed, in His Own Behalf.

J. L. REED, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

(By Mr. RITCHIE.)

Q. What is your name? A. J. L. Reed.

Q. Where do you reside? A. Valdez, Alaska.

Q. Are you the plaintiff in this suit?

A. I am.

Q. What is the nature of the claims sued on, which form the basis of this suit?

A. The nature of the claim is a suit for wages for work done by the two claimants upon the Battle Ax claims in the year 1907.

Q. There are two of these claims?

A. There are two of these claims—Karl Karlson and William C. Snook.

Q. Have these claims been reduced to judgment?

A. Yes, and assigned to myself.

Q. One of those judgments was in favor of William C. Snook? A. Yes, sir.

(Testimony of J. L. Reed.)

Q. And the judgment has been assigned to you?

A. Yes, sir.

Q. And the claim of Karl Karlson, was that assigned to you before judgment? A. Yes, sir.

Q. And judgment was recovered?

A. Yes, sir, judgment was recovered.

Q. And you are the present holder and owner of these judgments and whatever rights they confer upon the holder? A. Yes, sir, I am.

Witness excused. [95]

Mr. RITCHIE.—We desire now to offer in evidence the records in cases S-20 and S-21, being the suits in which the judgments were recovered which form the basis of this action. We only want to introduce the judgments, not the entire record.

Mr. FINNEGAN.—We object to the introduction of these judgment records on the ground that we do not find the defendant Ellis in these cases in any manner whatsoever—there is nothing to connect the defendant Ellis with William C. Snook, Eri Thompson or Dave Wallace.

By the COURT.—The objection will be overruled at this time and exception allowed.

Mr. RITCHIE.—In case of appeal we will substitute copies of the parts desired.

The substituted copies of the judgments in above cases, to wit, S-20 and S-21 are marked respectively Plaintiff's Exhibits "A" and "B," are attached hereto and made a part of this record.

Mr. REED.—We will call Andrew Beck. [96]

Testimony of Andrew Beck, for Plaintiff.

ANDREW BECK, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. REED.)

Q. What is your name? A. Andrew Beck.

Q. Where do you reside? A. In Seward.

Q. Were you one of the original claimants in the old suit of Thomas H. Meredith versus Eri Thompson and Dave Wallace? A. I was.

Q. Did you work on Thunder Creek in the year 1907? A. Yes, sir.

Q. Do you know William Snook or Karl Karlson?

A. I do.

Q. Do you know one or both of them?

A. I know both of them.

Q. Was William Snook working on Thunder Creek on the same mining property as you were in 1907? A. Yes, sir.

Q. Was Karl Karlson working with you at that time?

A. No, he worked there, he was working there the winter previous.

Q. What were his duties?

A. He was bringing in supplies.

Q. Hauling in supplies to this particular mining ground? A. Yes, sir.

Q. Did you see him working?

A. No, I did not—I saw him leaving Glacier Creek.

Q. Was he going up to this mining ground, or do

(Testimony of Andrew Beck.)

you know? A. That is what he was hired for.

Q. By whom? [97]

A. By Wallace and Thompson.

Mr. FINNEGAN.—We object to this.

Mr. REED.—The purpose of this is to show by this witness that the two claimants in this case—the Snook and Karlson claims— were contemporaneous with the other claimants, upon whose claims judgment was recovered and transcript of the record filed in the recorder's office and a deed was made, as we claim, by Thompson to Cummings, to defeat all of these creditors, not only the five who brought the original action, but the two who came later and sued separate from the original claimants * * * We must at least show a *prima facie* case as to fraud and our contention is that this evidence will show that these two claims involved in this action were of the same character and nature as the other claims and the natural presumption would be that if this deed were made for a fraudulent purpose as to any one or more of those parties, it would be natural to assume that it was made for the same purpose as to all.

Objection overruled; defendant allowed an exception to the ruling.

Q. Those parties were working on that claim in 1907?

A. Snook was working there in 1907; I don't know if Karlson ever did work on the claims.

Q. He hauled supplies to the claims you say?

A. That is what he started out for when he left Glacier Creek.

Q. Did you hear Eri Thompson instruct him to

(Testimony of Andrew Beck.)

go up to the claims? A. Yes, sir.

Q. Was Eri Thompson at Glacier Creek at that time? A. He was, yes.

Q. He was at Glacier Creek?

A. Yes, sir. [98]

Q. Were you working in the saloon with him?

A. No.

Q. Did you see him there? A. Yes.

Q. Do you know whether those supplies, etc. that Karl Karlson left for Glacier Creek with were taken up to the claims?

A. I suppose they were, I don't know.

Q. Did you hear Eri Thompson say anything about Karl Karlson's work?

A. No, I didn't hear Thompson say anything about it; he was supposed to be in there getting the supplies in, that is all I know.

Q. Who? A. Karlson.

Q. And Snook was actually working with you on the ground in the year 1907? A. Yes, sir.

Q. This is the Battle Ax group of mining claims on Thunder Creek? A. Yes, sir.

Mr. REED.—That's all.

Cross-examination.

(By Mr. FINNEGAN.)

Q. Were you a witness in the case of Meredith versus Thompson and Cummings? A. Yes, sir.

Q. At that time you were a resident of Cordova, were you not? A. Yes, sir.

Q. Have you in your possession now or did you ever receive a telegram from Mr. J. L. Reed asking

(Testimony of Andrew Beck.)

you to report to Valdez or to Seward for the trial of that case? [99]

A. I don't remember—I was notified that the term of court would be held there at such a time; I don't remember whether I got a telegram, or by mail.

Q. Did you either get a telegram or letter from Mr. Reed to come to Valdez for the trial of the case?

A. I suppose I did, yes.

Q. Do you remember now what the contents of that telegram or letter was?

A. No, I couldn't remember.

Q. Didn't that telegram or letter as it may be state that it was safe for you and the other witnesses to come to Valdez for the trial, that Thompson couldn't possibly get there.

A. No, I don't think so.

Q. Didn't you some time later show **this** telegram or letter to other parties? A. No.

Mr. RITCHIE.—We object to any further questions along this line—it is wholly irrelevant.

Mr. FINNEGAN.—Well, that is all.

Witness excused.

Mr. RITCHIE.—We desire for the same purpose to offer in evidence the record in Case #2162 in the Circuit Court of Appeals for the Ninth Circuit, entitled Eri Thompson and J. M. Cummings vs. J. L. Reed. The object is to show the finding by this court, which was afterwards affirmed by the Circuit Court of Appeals, as to the deed from Eri Thompson to J. M. Cummings, dated October 25,

(Testimony of Andrew Beck.)

1909, from which Ellis derives his title to the claim.

Mr. FINNEGAN.—We object to the introduction of the record on appeal [100] for the reason that it is not binding upon the defendant Ellis in any manner whatsoever. He is not a party to the litigation, nor were Karlson or Snook, the present plaintiffs herein, parties to that litigation; nor was the deed that was held by the Circuit Court of Appeals to be invalid declared invalid as to Karlson and Snook, but only as to Meredith and his associates in the prior suit.

Mr. RITCHIE.—The finding was that the deed was absolutely void.

By the COURT.—It may be admitted at this time. The objection will be overruled and defendant allowed an exception.

The record is marked Plaintiff's Exhibit "C," admitted in evidence, attached hereto and made a part hereof.

Mr. RITCHIE.—We now desire to offer from the record in S-9 the mandate from the Circuit Court of Appeals, being Case #2162, in the Circuit Court of Appeals for the Ninth Circuit, showing the return. It is simply the Remittitur.

Mr. FINNEGAN.—We make the same objection.

Objection overruled—Defendant allowed an exception.

The Mandate or return is marked Plaintiff's Exhibit "D"; copy is attached hereto and made a part hereof.

Mr. REED.—We call the attention of the Court

(Testimony of Andrew Beck.)

to the fact that the deputy marshal's return in the two actions 20 and 21 show that the attachment was issued; it shows the return of the attachment and the date of the attachment.

I will call Mr. Behrenburg. [101]

Testimony of H. Behrenburg, for Plaintiff.

H. BEHRENBURG, a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. REED.)

Q. What is your name? A. H. Behrenburg.

Q. Where were you in the year 1912?

A. In the Cache Creek country.

Q. Were you specially appointed to serve the attachment in these two cases of Snook and Karlson?

Mr. FINNEGAN.—We object to that; if it is in the record as counsel states, the record speaks for itself.

Mr. REED.—It is preliminary.

By the COURT.—He may answer.

A. Yes, sir.

Q. What did you do in making the attachment?

A. I just went with instructions and put the notice up on the camp.

Q. That was on September 22, 1912 as the returns show?

A. I don't remember the date—it was in September, 1912.

Q. Was Mr. Ellis on the ground at that time?

A. No.

(Testimony of H. Behrenburg.)

Q. Did you post the notice on any conspicuous place as your returns show?

A. Right at the camp, yes.

Q. That is the Battle Ax group of mining claims, is it not?

A. I wouldn't be sure what the name of it is,— I never learned.

Q. Was Mr. Ellis on the ground? A. No.

Q. Was any one on the ground at that time?

A. I don't remember whether they were on the ground or not, or whether they were working on that ground. [102]

Q. You don't know whether any one was working on that ground?

A. There was men on the creek, but I couldn't say whether they were on the ground or not.

Q. Is that the ground that Mr. Ellis worked during the summer of 1912, if you know?

A. That was his camp, yes.

Q. Had he been working there during the summer of 1912? A. Yes.

Q. How many men did he work?

A. I couldn't say—he had a crew; I didn't know the number of men.

Q. Approximately how many?

A. Eight or ten men, something like that, I guess.

Q. Did you see Mr. Ellis there that summer?

A. Yes, I did, just going through there paying a visit.

Q. You went over to the ground, did you, to pay him a visit? A. Yes.

(Testimony of H. Behrenburg.)

Q. That is the same ground you attached in this action? A. Yes.

Q. Is that your signature to both of these certificates of levy of writ of attachment? (Showing witness papers.) A. Yes, sir.

Mr. REED.—We wish to offer these certificates of levy, showing the date they were filed for record, to wit, July 25, 1914. They are admitted in evidence, without objection, marked respectively Plaintiff's Exhibit "E" and Plaintiff's Exhibit "F." Copies of said exhibits are attached hereto and made a part hereof.

Q. After you signed these certificates, did you send them to the recorder? A. Yes, sir. [103]

Q. That same month? That same time?

A. Shortly,—a few days after.

Mr. REED.—That's all.

Mr. FINNEGAN.—I have no cross-examination. Witness excused.

PLAINTIFF RESTS.

Mr. FINNEGAN.—At this time the defendant Ellis moves for a nonsuit.

After argument, the motion for nonsuit was by the Court denied and defendant allowed an exception to the ruling.

AFTERNOON SESSION.

Mr. FINNEGAN.—At this time I wish to move to dismiss the action as far as any claim of the plaintiff derived through Karl Karlson is concerned.

After argument the motion was by the Court de-

(Testimony of H. Behrenburg.)

nied and defendant allowed an exception to the ruling.

Mr. FINNEGAN.—I desire to request that we be allowed to amend our pleadings to conform to the proof. We have alleged in paragraph 5 of our Answer that at the time the final payment was made by Ellis to Cummings that the sum of \$2000, or thereabouts was placed in the hands of Mr. S. O. Morford as trustee to pay all outstanding claims. We did not know, it never was brought home to us until to-day that that sum of money was placed in the hands of Judge Morford a year before, rather in 1912 at the time of the first payment and we desire to amend accordingly.

By the COURT.—Very well. [104]

DEFENSE.

Testimony of M. A. Ellis, in His Own Behalf.

M. A. ELLIS, one of the defendants, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination.

(By Mr. FINNEGAN.)

Q. What is your name and residence?

A. M. A. Ellis; Seattle, Washington.

Q. You are the same party who is defendant in this action? A. Yes, sir.

Q. Are you acquainted with what is commonly called the Battle Ax Association claim on the Susitna River? A. Yes, sir.

Q. Tell the Court when you first visited the prop-

(Testimony of M. A. Ellis.)

erty and what transpired then?

A. In August, 1911, I visited it, spent two days, I think, and one day there visiting.

Q. Who were in possession of the property at that time? A. Harper Brothers.

Q. State to the Court what proceedings you had then with the Harper boys, if any.

By the COURT.—What month was that?

A. It was in the month of August, 1911.

Q. Previous to that, had you been in the Susitna country,—before that time?

A. No, that was my first trip in there.

Q. What is your general occupation?

A. Mining.

Q. You have followed that how many years?

A. Twenty-five.

Q. In what places? [105]

A. Pierce, Idaho—in the Coeur d'Alene country, Idaho and this part of Alaska.

Q. State what transpired between you and the Harper boys at that time?

A. The Harper boys showed me the gold they were cleaning up. I will state I was there prospecting some other ground, for some other parties, dredging ground, and they visited me, several miles below. They were working the ground under a lay. They showed me their cleanups and wanted me to buy the ground, said it was a good buy. We talked it over and I told them I would buy the ground if I could get it at the right price and I just panned around a little; I took their word mostly for what they cleaned

(Testimony of M. A. Ellis.)

up. I had known them a great many years; they worked for me in Idaho for several years. I came away from there then, the 28th of August, I believe it was—I came from that country and came down to the lower country and came out. During the winter of 1912, they came outside and they had an option to purchase the ground and I got an assignment from them and purchased the ground.

Q. From whom did you purchase the ground?

A. I purchased the ground from the Harper Brothers, that is, they had an option from Mr. Cummings and I purchased the ground from the Harper Brothers, paying them a commission and paying them for the tools and what they had on the ground and made the payments to conform with the option they had.

Q. I will ask you to state what this instrument purports to be? (Handing witness paper.)

A. That is the original option that I purchased on, with the assignment from Harper to me—I said Harper Brothers; it is Al Harper. [106]

Mr. FINNEGAN.—We offer this option in evidence.

It is admitted in evidence, without objection, and marked Defendants' Exhibit #1; copy is attached hereto and made a part hereof.

Q. State what transactions you had under that option.

A. Well, I made the first payment of \$4,000 under the option in February, I believe it was, 1912.

Q. To whom did you make the payment?

(Testimony of M. A. Ellis.)

A. I made the payment to the Harper Brothers; I think they transferred it to Mr. Cummings. I wouldn't be sure just how that was made. I was in Idaho when it was made and I had my attorney in Seattle attend to it. It was wired to Seward here, wired to the Bank of Seward.

Q. Is it not a fact, to refresh your memory, that the money was wired to Harper Brothers here at the bank of Brown & Hawkins?

A. I believe that is the way it was, I wouldn't be sure; I don't remember just exactly how the money was paid, but it was paid at that time.

By the COURT.—At what time?

A. In February, 1912.

Q. Was any part of that sum of \$4,000 retained by any other persons?

A. \$2,500 was retained by the Bank of Seward to pay all debts of record against the ground.

Q. Retained in the Bank of Seward or by the Bank of Seward?

A. Well, it was deposited through Judge Morford, I think, but it was in the Bank of Seward, to pay all debts of record against the ground. I heard about that time about the suit that was pending and the amount of the suit I understood was \$1,500 but we didn't know just what the amount would be, so \$2,500 of that \$4,000 was deposited here in the bank to cover that and was [107] there during the pendency of the option.

Q. When did you make your second payment?

(Testimony of M. A. Ellis.)

A. I made the second payment, I think it was the second of August—it was before I came out; I sent out gold dust; made it at the Bank of Seward.

Q. That was 1912?

A. Yes; I wouldn't be certain whether it was the first of August or first of September, but it was the first of August, I think. However, the contract shows for itself; the payment was made when the contract called for it.

Q. (By the COURT.) What amount was that payment? A. Three thousand dollars.

Q. Now, at this time, in the summer of 1912, did you hear or learn of any other outstanding claims, other than the one you have testified to?

A. I had a letter from Mr. Snook, who was at Hope; I got that during the summer while I was out, I reckon. I had never heard of the debt of Snook or any other debts outside of this suit that was started, but I had a letter from Mr. Snook, telling me he had worked several years before for Mr. Wallace on the ground and asking me about how my payments were to be made; I don't remember just the exact wording, but he told me about having some money coming.

Q. Did you reply to that letter?

A. Yes, I answered him and told him I bought the ground, told him how much I had paid and that I had bought it under a contract to make certain payments at a certain time; also told him as I remember that there was \$2,500 on deposit in the Bank of Seward to cover all debts of record and for him to

(Testimony of M. A. Ellis.)

get his debt on record,—that that was the place to get his money. [108]

Q. When did you make another payment?

A. I made the final payment during the next winter some time, I don't know just when.

Q. At the time of the final payment, did you receive a deed to the property? A. Yes, sir.

Q. Was it at that time that you made the payment? A. Yes, sir.

(By the COURT.)

Q. What was the last payment?

A. Three thousand dollars.

Q. And whom was it to?

A. It was to—I made the payment to Judge Morford—he gave me the deed.

Q. At what time?

A. I think it was in February, 1913—I ain't certain about that date.

(By Mr. FINNEGAN.)

Q. Whom was the second payment made to?

A. The second payment was made to Mr. Cummings, through the Bank of Seward here—I didn't make that myself, personally, I sent out a man to make it for me—I was busy at the diggings.

Q. And the third payment was made to Mr. Cummings through Judge Morford?

A. Yes, the third payment was made to Mr. Cummings through Judge Morford—Judge Morford delivered me the deed.

Q. Was Mr. Cummings present at the time of the final consummation?

(Testimony of M. A. Ellis.)

A. No, sir, I think he was in British Columbia some place, so the Judge told me—there was nobody present excepting the Judge.

Q. At the time of making the final payment, and previous thereto, did you make any examination of the record title of the claim [109] or cause any to be made?

A. I had an abstract—I ordered an abstract as I went into the diggings in the spring to work, in the spring of 1912 and when I came out in the fall, the recorder had the abstract for me, and when I got here, to the town of Seward, I heard there had been some kind of papers filed. I stopped on my way a couple of weeks to look at some mining property. I couldn't find out what it was and I wrote back there and they told me it was a suit started against Wallace and Thompson and had nothing to do with me, but I wrote back during the winter, before I made the final payment, to the recorder and asked him if anything showed on the record to let me know, that I expected to make the final payment and he wrote me that nothing had showed against the ground—just a few days before I made the final payment I had word from him that nothing showed.

Q. Have you those letters at the present time?

A. I have not.

Q. You have the abstract?

A. I have the abstract here with me.

Q. Do you identify that instrument? (Handing witness paper.)

A. That is the abstract.

(Testimony of M. A. Ellis.)

Mr. FINNEGAN.—We offer the abstract in evidence.

It is admitted, without objection, marked Plaintiff Defendant's Exhibit #2; attached hereto and made a part hereof.

The WITNESS.—I came out in September—I left the camp on the third of September of that year.

Q. Do you recognize that instrument? (Handing witness paper.)

A. Yes, sir, that is the deed that I received on the final payment.

Q. This is the original deed?

A. This is the original deed. [110]

Mr. FINNEGAN.—We offer the deed in evidence.

It is admitted, without objection, marked Defendant's Exhibit #3—attached hereto and made a part hereof.

Mr. FINNEGAN.—The deed bears date the 28th day of February, 1913, between J. M. Cummings, party of the first, and M. A. Ellis, party of the second part and was filed for record by J. E. Chapman of the Thunder Creek Mining Company on the 28th day of March, 1913, at 15 minutes past 8 A. M. and recorded in Volume 2, Supplement, of Deeds, page 151 Records of Cook Inlet, Precinct, Alaska and signed, this endorsement of record, signed by Lee Van Slyke, U. S. Commissioner and Ex-Officio Recorder by H. W. Nagley, Deputy.

Q. Who is this Mr. Chapman?

A. Chapman was working for me at the time, for several years previous to that time.

(Testimony of M. A. Ellis.)

Q. Did he record that deed at your request?

A. Yes, sir, I was sending him into the diggings to do my early spring work and sent the deed along by him.

Q. What was the total amount that you paid for the property? A. For the Battle Ax?

Q. Yes. A. Ten thousand dollars.

Q. Was that a fair adequate amount?

A. I consider it so.

Mr. FINNEGAN.—That will be all.

Cross-examination.

(By Mr. REED.)

Q. You are acquainted with this deed—why was this 1912 scratched out and 1913 substituted, at the beginning of the deed—This indenture made the 28th day of February, one thousand nine hundred [111] and twelve and the twelve scratched out and thirteen written in—was the deed made in 1912?

A. I don't have any idea.

Q. You don't know anything about that, why that was done? A. No, I never noticed it before.

Q. Where was this deed executed?

A. I don't know that—I received it in Seattle.

Q. Who sent it to you?

A. Judge Morford delivered it to me in person.

Q. Judge Morford delivered it to you at Seattle?

A. Yes, sir.

Q. What day did he deliver it to you, do you remember?

A. I don't remember the exact date, no, but what-

(Testimony of M. A. Ellis.)

ever date the deed shows, I think, was the date—I had my attorneys there looking after it.

Q. This indenture made this 28th day of February, 1913—with the 12 scratched out—was that the day it was delivered to you? A. Yes, sir.

Q. And that was the date of the execution of the deed?

A. I don't know what you mean exactly by execution—that is the day I received the deed; I don't know when the deed was executed.

Q. That is the day you received it? A. Yes.

Q. That was in 1913?

A. I think Judge Morford had to send to British Columbia to get the deed or something; he was on his way to Yakima and I had arrangements with him—I told him I was ready to take it up and he said he had to go to Yakima to visit some of his people and he would write and get the deed and meet me on a certain day in Seattle and we would clean it up, and that was the arrangement we made, and we done it and he delivered the [112] deed to me; I don't know when the deed was executed or where it was executed.

Q. Doesn't that deed state that J. M. Cummings acknowledged the deed on the 28th day of February, in British Columbia? Now how could that deed be acknowledged on the 28th day of February, 1913, in British Columbia, and on the same day be delivered to you in Seattle? Will you explain this discrepancy? A. I never noticed it.

Q. You don't know how to explain that, do you?

(Testimony of M. A. Ellis.)

A. No, sir; I do not.

Q. The last payment under that contract was supposed to be made in October, October 15, 1912, is that not true?

A. I don't remember just what date.

Q. Do you remember writing to William Snook a letter and telling him the last payment under this contract would be made by you in October 15, 1912?

A. I think I did, whenever the contract called for it—I expected to make the payment as the contract called for.

Q. What was the object of deferring the payment from October 15, 1912 to the 28th day of February, 1913?

A. There was financial reasons for one thing; I was hard up at the time and I had made several payments.

Q. Wasn't the real reason for deferring that payment to find out what the Circuit Court of Appeals said about this deed between Thompson and Cummings?

A. No, sir, it never entered into my mind.

Q. It was not—you state that under oath, that was not the fact? A. Yes, sir.

Q. Do you know what the Circuit Court of Appeals said about that deed?

A. I do now, yes—I read the transcript on appeal.

Q. Before you made the final payment on February 28, 1913—was [113] this in Seattle—was the final payment made in Seattle? A. Yes, sir.

Q. You knew of the pending suit then in the Cir-

(Testimony of M. A. Ellis.)

cuit Court of Appeals, did you not? A. Yes, sir.

Q. And you knew of the decision in the Circuit Court of Appeals? A. I don't think I did.

Q. Wasn't the decision rendered on February 3, 1913—hadn't you heard about that?

A. I don't think I did.

Q. Don't you know you did?

A. I don't know whether I knew it or not—it wouldn't have made any difference to me if I had.

Q. You knew that certain creditors of Thompson had in that suit sought to reduce their claims to a judgment and collect it in that suit, did you not—you knew of that in the Meredith case?

A. Yes, sir.

Q. Did you make any inquiries to ascertain how many men worked for Thompson on Thunder Creek in 1907, at the time these claims were created?

A. Only in a general way; all I heard was just conversation and talk; I never heard of any outside claims until I got the letter from Snook during the summer of 1912.

Q. Until that time you never knew of any other claims except the ones in suit at that time, and in litigation?

A. That is all I heard of; I never heard of this Karlson until this suit was filed, this present suit.

Q. You were in possession under your contract to purchase during the year 1912, were you not, in possession of the Thunder Creek [114] mining claims?

(Testimony of M. A. Ellis.)

A. Yes, sir.

Q. And you worked those claims during the summer of 1912? A. Yes, sir.

Q. What time did you leave there?

A. I think it was the third of September, 1912.

Q. You think it was the third of September, 1912?

A. Yes, sir.

Q. Now, on your way out, you heard something about suits being filed?

A. No, I came to Hope and Sunrise and Glacier Creek—I spent a month back in this country, between here and the diggings, looking the country over and I got into Seward and met one of the men I left working on the claim and he told me there was some kind of a paper filed, posted on the cache there.

Q. You knew then that some kind of a paper had been posted on the cache in 1912? A. Yes, sir.

Q. About what month was that?

A. That was in October.

Q. Did you take any steps to ascertain what that paper was? A. Yes, sir.

Q. What did you find that paper to be?

A. They told me it was a suit started by Snook against Wallace and Thompson.

Q. Who told you that?

A. I don't remember, I think it was the recorder over there wrote me.

Q. The recorder wrote you? A. I think so.

Q. Have you got that letter? [115] A. No.

Q. Why didn't you bring that letter?

(Testimony of M. A. Ellis.)

A. I don't keep my letters—I don't have any files of those letters.

Q. The recorder wrote you and told you a suit had been filed—what was the wording of that letter?

A. I don't remember the exact wording.

Q. Don't you know approximately what the contents of that letter was? A. Certainly.

Q. State to the Court what it was.

A. The gist of the letter was that there was a suit started for wages against Thompson and Wallace and the letter also informed me that it had nothing to do with me.

Q. Did he say anything about an attachment being levied on the ground? A. No, sir.

Q. You are under oath and you say you knew nothing about an attachment being levied on the ground? A. No, sir.

Q. Absolutely nothing?

A. Absolutely nothing. I came to Judge Morford and asked him if he knew about it and had him call up the office at Valdez, while I was here, the two or three days I was waiting for the boat and he couldn't find out anything for me, what the papers were at all and I didn't know until I heard from up there that it was a suit started against Thompson and Wallace.

Q. That was in October, 1912?

A. Yes, I was on my way home to Seattle.

Q. You say in October, 1912, here at Seward, that somebody informed you there had been a paper filed upon the ground, is [116] that true?

(Testimony of M. A. Ellis.)

A. Yes, sir.

Q. On the Thunder Creek property?

A. Yes, sir.

Q. A paper served on the ground?

A. Yes, sir.

Q. And he didn't know what kind of a paper it was?

A. I was told that some kind of a paper was tacked up on a post out there.

Q. What was told you by this party, what were the words he used about this paper?

A. He said he didn't know what it was, but it was something about Thompson and Wallace, who were interested in the ground.

Q. What did he say about it being tacked up on the ground?

A. He said that Henry Behrenburg came over there and stuck it up on a post there, close to the camp, a post at the cache.

Q. With that knowledge in your possession did you go to the ground yourself or send anyone to the ground to ascertain what that paper was, what was posted up by Behrenburg?

A. No, I wrote back to Susitna Station to Nagley, who was acting recorder at that time—I wouldn't be sure whether it was Nagley or Van Slyke, one or the other of them, and asked them about it.

Q. And you relied upon what they told you?

A. I did, also relied upon what Judge Morford told me; I had him look it up here, went to him about it and asked him what he knew about it and he

(Testimony of M. A. Ellis.)

called up and tried to find out something about it.

Q. Did anybody tell you, after you received this information, or did anybody on your behalf after you had received this information, report to you, what the contents of that paper was that [117] was posted up? A. No, sir.

Q. You relied upon the information of others who had not seen the paper, is that correct?

A. There was a man working on the ground at the time the paper was posted there and I relied upon the information he had.

Q. What did he say?

A. He told me it was some kind of a paper about Thompson and Wallace, he didn't know just what it was.

Q. Did you ask him as to the particulars, and contents of the paper?

A. I did, but he didn't know.

Q. And you didn't pursue the inquiry further than that?

A. I did; as I say I went to Judge Morford and wrote up there, either to Nagley or Van Slyke, I don't remember which.

Q. This man that you wrote to, who stated it was some kind of a paper in relation to a suit between Wallace and Thompson, between the assignors in this action and Wallace and Thompson,—you have stated what he told you—was the only person that you relied upon that had actually seen the paper?

A. I relied upon the abstract that I got afterwards and the letter from the commissioner told me

(Testimony of M. A. Ellis.)

that there was nothing against the ground.

Q. You haven't got that letter, have you?

A. No.

Q. That letter was not certified to in the form of an abstract? A. I don't think so.

Q. This abstract was made September 7, 1912, which was prior to September 22, 1912, when the attachment was served, is that correct?

A. Yes, sir. [118]

Q. So you had no abstract subsequent to that time? A. No, sir.

Q. After you had received this notice and the knowledge of this paper being tacked up on a post on this ground, the only person that saw that paper that told you as to what its contents was, was this man that wrote you?

A. Yes, I had a letter from up there and Judge Morford here—

Q. I am asking about the people that had seen this paper—that was the only man that told you what the contents of that paper was?

A. That was the only man I remember of, yes.

Q. And you didn't pursue any further inquiry through any source that had direct knowledge of the contents of that paper?

A. No, I went right on outside of the boat—left it with Judge Morford here to look after.

Q. Did you, after receiving that notice of this suit, make any effort to ascertain what the suit was about from the files of the clerk's office of the District Court?

(Testimony of M. A. Ellis.)

A. No, I left that to Judge Morford.

Q. You never made that investigation yourself?

A. No.

Q. You never went to the clerk's office after that time to find out whether an attachment had been sued out in these suits?

A. I never went to the clerk's office in my life.

Q. Now, you say that you wrote Mr. Snook and told him that there was \$2500 that had been left in the bank to pay creditors, is that true?

A. I wrote to him; I don't know that I stated the exact amount—I don't keep copies of my letters; I told him that I was tied up to perform a certain contract, make certain payments at a [119] certain time, but there was some money in the Seward bank.

Q. And in that letter, did you not advise Mr. Snook to bring suit on his account?

A. I did; I told him to get it in the record, that was the place to get his money.

Q. But you never found out whether it was in the record afterwards, did you? Is that your letter? (Handing witness paper.) Is that the letter you received from Mr. Snook?

A. No, this is the letter I wrote to him.

Q. Look at the other side and see if it is not the letter he wrote to you and the reverse side, the letter you wrote to him, in response thereto.

A. Yes, that is both letters.

Mr. REED.—We offer that letter in evidence.

It is admitted, without objection, marked Plain-

(Testimony of M. A. Ellis.)

tiff's Exhibit "G"; is attached hereto and made a part hereof.

Q. Following the advice that you gave to Mr. Snook in that letter for him to bring suit on his claim, did you go to the clerk's office to ascertain whether he had conformed to that advice?

A. No, sir.

Q. You did not? A. No, sir.

Q. Now, going back to the question as to who the creditors of Thompson were in the year 1907 on the Battle Ax group, you knew that certain men that had worked on those claims that summer had brought suit for their claims?

A. Yes, I heard of it.

Q. And they had secured judgment and sought in another action to set aside the conveyance of Thompson to Cummings as being void for fraud?

[120]

A. I didn't know about their bringing another suit to set aside—I knew there was some claims and some kind of a suit but I didn't know the particulars of it.

Q. When you made this last or final payment in Seattle to Judge Morford, did you make any inquiries as to what that suit was for or what its object was?

A. No, I made inquiries from Judge Morford about the suit or if there was anything showed on the records—I had left it with him to look into this matter when I was here in the fall.

Q. You didn't know what the purpose of that suit

(Testimony of M. A. Ellis.)

that was pending in the Circuit Court of Appeals at that time was?

A. No, I supposed it was to collect wages.

Q. You didn't know it was to set aside this deed from Thompson to Cummings for fraud? A. No.

Q. You never heard there was any fraud in the deed from Thompson to Cummings?

A. I never heard anything of that kind.

Q. Did you know the deed from Thompson to Cummings was being attacked by suit?

A. I did not.

(Mr. Reed reads exhibit "G" to the Court.)

Q. Did you go to Hope that fall? A. Yes, sir.

Q. Did you look up Mr. Snook?

A. Yes, I was at his house—he was off doing assessment work.

Q. You didn't get to see him then?

A. No, I didn't get to see him.

Q. You swore to this answer to the amended complaint, did you not? A. Yes, sir. [121]

Q. Did you read it?

A. I hurriedly read it; I was only here about an hour in the morning and had to go up and see Judge Morford and drag him out of bed.

Q. Was it read to you? A. No.

Q. Did you know the contents of it?

A. In a general way, yes.

Q. You swore to it, did you not—that the facts stated in that answer were true, did you not?

A. To the best of my knowledge and belief.

(Testimony of M. A. Ellis.)

Q. Is this true, to the best of your knowledge and belief—

That this defendant had no knowledge or information that there existed any other claims or demands of any kind or nature against Eri Thompson and Dave Wallace or Eri Thompson and J. M. Cummings, other than the suit of Thomas H. Meredith vs. Thompson and Cummings.

Is that part of your answer true? A. No.

Q. That answer is false? A. Part of it.

Q. You swore to the Answer but you didn't know what the contents were?

By the COURT.—He answered he swore to it.

Q. Is this part of your answer correct:

This defendant denies any knowledge or information of any claim or demand of any person or persons, other than the suit of said Meredith vs. Thompson and Cummings, either before or at the time of his final payment to said J. M. Cummings for said Battle Ax group of mining claims, on or about the 28th day of February, 1913. He denies that he had any knowledge or information of any suit or attachment of Karl Karlson or William C. Snooks or any other person or persons against J. M. Cummings, or Dave Wallace, or Eri Thompson, at or prior to the 28th day of February, 1913, the date when this defendant made final payment to said J. M. Cummings and received from him a deed to said Battle Ax group of mining claims.

(Testimony of M. A. Ellis.)

Is that true or false? [122]

A. It is partly true and partly false—I am telling you here that I did know before.

Q. You did know? A. Yes.

Q. That is partly false then, as to the fact that you did not know?

A. It is a mistake. I got here in the early morning on my way to Seattle, at four o'clock in the morning, I think it was, and had to go and wake Judge Morford out of bed and we came down and the boat was whistling when I saw the complaint. I never had a chance to read it or digest it or study it, I just glanced at it and supposed it was all right and signed it—in fact, I never had a chance to talk with the Judge about the case.

Q. Who was that party that told you about the paper being posted up on the ground?

A. Mr. Arthur Meloche of Seward.

Q. He is here, is he?

A. I think he is in the courtroom probably,—yes, he is.

Q. Did you have knowledge of any other fact or circumstance relative to these subsequent suits of Karlson and Snook other than you have stated?

A. I don't just understand what you mean.

Q. You stated certain knowledge that you possessed regarding these suits, the posting up of the paper and that suit had been started in October, 1912—did anyone else tell you about the suits?

A. Not that I remember of.

Q. You wrote up to some one on the ground—

(Testimony of M. A. Ellis.)

when did you write that letter?

A. Not on the ground; I wrote to somebody at the station—there was nobody up at the ground that time of the year. [123]

Q. What time of the year was it you wrote this letter?

A. It was in the fall, after I got to Seattle.

Q. Was that one of the men that was working for you during the summer of 1812? A. Yes, sir.

Q. What was his name? A. That I wrote to?

Q. Yes.

A. No, that was either the recorder or the acting recorder—I don't remember whether it was Judge Van Slyke or Mr. Nagley.

Q. Didn't you state in your direct examination that you wrote up to somebody that had seen this paper on the ground to ascertain what its contents were? A. No, sir.

Q. Didn't you state that?

A. I don't think so, if I did I was mistaken. I seen Meloche who had seen the paper—I saw him here in Seward.

Q. Was he the man you saw after you came out from the diggings? A. Yes, sir.

Q. Didn't you state in your direct examination that you had written to somebody up on the ground that had seen the paper, besides Arthur Meloche? A. No, sir; if I did I stated wrong.

Q. So Arthur Meloche was the only person who spoke to you about the paper? A. Yes, sir.

Q. And that was in a conversation which you had

(Testimony of M. A. Ellis.)

with him here in Seward? A. Yes, sir.

Q. That was during October, 1912? [124]

A. Some time during October, 1912—I don't just remember the date.

Q. What did he tell you as to the contents of that paper?

A. Well, he didn't know much about it, he couldn't tell me much about it—he didn't know just what it was.

Q. Then outside of Arthur Meloche you never pursued any further inquiry to ascertain by direct information as to the contents of that paper?

A. Only through Judge Morford, and I went down and told my Seattle attorneys about it and turned it over to them.

Q. Did you seek information from any other one except Arthur Meloche, who had seen that paper, as to its contents?

A. No, no one else that had seen the paper—I asked several people about it; the Harper Brothers were in town.

Q. They hadn't seen the paper? A. No.

Q. So Meloche was the only person who had seen the paper that you had direct knowledge of?

A. The only one I remember of.

Q. Can you think of anyone else? A. No.

Q. Would you know if you had any conversation with anyone else?

A. I don't know whether I would or not—I don't remember seeing anybody from that country after I left.

(Testimony of M. A. Ellis.)

Q. After receiving that knowledge, you didn't ask anyone to go to the clerk's office to ascertain about the suit and whether there had been an attachment?

A. I asked Judge Morford to investigate it.

Q. Did he say he had gone to the clerk's office and investigated it?

A. I don't remember what he did say, only there was nothing to it, [125] he couldn't find out anything, at the time I was here and afterwards he told me there was nothing showed on the records.

Q. What records did he refer to?

A. I don't know.

Q. Did he tell you that he had examined the files in the clerk's office?

A. No, he did not tell me that.

Q. You knew where suits were filed in this district?

A. I suppose they would be filed in Valdez.

Q. And with this knowledge you had, you could have sent someone to the clerk's office to find out about this, couldn't you?

A. I could; I depended on Judge Morford to do that—I was paying him for it.

Q. You don't know whether he did it or not?

A. He told me he did.

Q. Did he tell you he had been to the clerk's office?

A. No, he didn't tell me that—I don't remember if he did.

Witness excused. [126]

Testimony of S. O. Morford, for Defendant.

S. O. MORFORD, a witness called in behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FINNEGAN.)

Q. What is your name? A. S. O. Morford.

Q. Where do you reside? A. Seward.

Q. You have been acquainted with the legal actions that have been pending in this court and the Circuit Court of Appeals in which the property here involved was in litigation, for some number of years?

A. I have.

Q. And are thoroughly familiar with all the procedure that has been had and taken? A. Yes, sir.

Q. Have you acted in this matter as one of the attorneys of record for Mr. Ellis?

A. In this case?

Q. Yes. A. Yes.

Q. When did you first meet Mr. Ellis, if you remember?

A. Well, I am not able to state the exact date—I think it was in connection with the Harper Brothers and this deal between the Harpers and Ellis—I think that is the first acquaintance I had with him; it is the first I now remember.

Q. At that time, there has been testimony here of the transfer of the lease and option from the Harper boys to Ellis and also agreements between Ellis and Cummings—did you act for Mr. Cummings in these matters? A. I did. [127]

(Testimony of S. O. Morford.)

Q. As his attorney? A. Yes, sir.

Q. And did you act as Cummings' attorney at the final consummation of the deal in Seattle on February 28, 1913? A. I did.

Q. Was Ellis present at that time?

A. Ellis and Mr. Sauter was there; he was representing Mr. Ellis; he is an attorney in Seattle and I was representing Cummings.

Q. Was Cummings present?

A. Cummings was not present when the deal was closed, I think he was not present; I don't remember very distinctly; I was in a hurry to get to Yakima at that time; my daughter was sick over there and I left hurriedly and the deed had to come back from British Columbia, I think, and I think after the first conversation, an adjustment of the matter had been talked over by Sauter and Ellis; I went to Yakima, was gone a number of days and came back and in the meantime, the deed had come and I went up and consummated the deal and final settlement with Sauter and Ellis.

Q. At that time did you deliver Cummings' deed to Ellis? A. I did.

Q. What did you receive therefor?

A. Received the balance of the payment, either in a check or draft from Ellis,—I am not now certain.

Q. What did you do with that money?

A. That money was sent to Cummings.

Q. In British Columbia?

A. In British Columbia.

(Testimony of S. O. Morford.)

Q. The year previous had any money been placed with you as trustee in this transaction? [128]

A. After the time when the suit of Meredith versus Thompson and Wallace and the suit between Meredith or Reed, as assignee, against Thompson and Cummings were appealed, \$2,500 by agreement was placed in my hands to meet the possible contingency of the suit being affirmed and Cummings would have to pay the judgment. The money remained in my hands until after the judgment had been rendered in the Court of Appeals and I think if I am not mistaken that I gave Mr. Ritchie a check or draft for the money and settled the suit.

Q. Do you remember approximately what date it was that this money was placed in your hands?

A. It was somewhere in—if you will tell me the time when the case was appealed—it was at or about the time that the case was appealed from the District Court to the Court of Appeals.

Q. It was in the spring of 1912?

A. About that time, probably April.

Q. How long did that money remain in your hands?

A. Until after the final judgment and Remittitur came down from the Court of Appeals; then I paid out of that money—\$2,175 if I remember right or thereabouts of that money was paid to Mr. Ritchie in satisfaction of that judgment and costs.

Q. So the money remained in your hands as trustee for a year practically, or more? A. Yes, sir.

Q. And at the time of paying the judgment and

(Testimony of S. O. Morford.)

the costs there was still a balance in your hands of \$300 or more? A. Yes, sir.

Q. At the time of the consummation of the final arrangements in Seattle and previous thereto, had you at the request of Mr. Ellis investigated the title to the claims? [129]

A. Yes, I had made an effort to.

Q. What were your discoveries?

A. After the time when there was a rumor that a paper had been filed on the claim, probably the time when Ellis came out, I wrote to Susitna Station enquiring if any attachment had been recorded or entered up there against any of that property, that is as I remember it now, and received a reply there was none. After I came back, I think, from Seattle, in 1913, I had made some enquiries and got copies I think of the suit—there had been a suit filed by a man named Snook and I think the clerk, if my memory serves me right, wrote me that there were two suits filed. Then I got a copy of both the complaints in those actions and that was a suit against Thompson and Wallace and as I remember it, it was after I came back from Seattle, in 1913, after the payment.

Q. State if you know whether this deal on the part of Cummings was entered into on his part with the idea of delaying or defrauding any creditors of his?

A. Absolutely not; Mr. Cummings had been assured by myself that we were entitled to a judgment in our favor.

Mr. REED.—We object to that as self-serving.

(Testimony of S. O. Morford.)

By the COURT.—It may stand—objection overruled. Plaintiff allowed an exception.

Q. During the time that you were dealing with Mr. Ellis in the sale of this property, you acted entirely, did you, for Mr. Cummings? A. Entirely.

Q. You were conversant with every move in the transaction from its inception to its finish?

A. I think so.

Q. Did you at any time during the progress of the transactions attempt [130] to conceal or did you conceal any imperfection or defect from Mr. Ellis?

A. Not with knowledge, I am sure.

Mr. RITCHIE.—We object to that as incompetent, irrelevant and immaterial and move to strike the answer.

Objection overruled and motion denied. Defendant allowed an exception.

Mr. FINNEGAN.—That is all.

Cross-examination.

(By Mr. RITCHIE.)

Q. This first contract here between Cummings and the Harper Brothers in December, 1911, that was drawn by you in your office here in Seward?

A. I don't know.

Q. The witnesses to the signature of Cummings are S. O. Morford and Curtis R. Morford.

A. Well, it is possible it was drawn in the office.

Q. When did you first hear of the claims of Snook and Karlson?

A. I never heard of the Karlson case until after

(Testimony of S. O. Morford.)

I came back from Seattle in 1912, after the final payment and settlement, as I stated in my direct examination. If my memory serves me, it was a notice I received from the clerk's office, in enquiring about the suit, that there was two suits. That is my memory of it now. The Snook matter I was familiar with at an earlier date. Snook was here in Seward about the time that Mr. Reed took charge of the Meredith cases, somewhere along there and Mr. Snook I interviewed at Mr. Fitzpatrick's saloon here, had a talk with him about the claims of these laborers that had joined with Mr. Meredith. Mr. Snook informed me that he never worked for Mr. Thompson and he knew they had dissolved partnership [131] and had refused to put in any claim with Meredith, and I asked him if he would so swear if I put him on the stand but we were prevented in the first trial from getting our witnesses and consequently he was never subpoenaed to answer.

Q. When was this?

A. That was before the trial of Meredith against Wallace and Thompson—it was prior to that time, we anticipated using him as a witness.

Q. When did you next hear of the Snook claim?

A. When this enquiry was made here, about the fall of 1912, or early in the spring, but nothing definite had I found out until after my return.

Q. Mr. Ellis has testified here that he received the letter introduced in evidence and made answer on the same sheets? A. Yes.

Q. And it is admitted that the contents of both of

(Testimony of S. O. Morford.)

those letters are correct—the letters were so transmitted, and he afterwards went to Hope, the same season if I remember his testimony, to see Mr. Snook, but was unable to see him—you heard that testimony? A. Yes.

Q. Did Mr. Ellis talk to you any in the fall of 1912 about the Snook claim or the Karlson claim?

A. I think there was a conversation in reference to a rumor of a suit or claim being filed on the property and I wrote to the recorder in reference to whether any attachment had been filed or suit filed in that court, or attachment filed in that court in the commissioner's office in Susitna.

Q. The question was, did you and Mr. Ellis talk about these Snook and Karlson claims when he came out in the fall of 1912? [132]

A. I think it was mentioned, yes.

Q. Did he tell you that Arthur Meloche had told him about the notice being posted on the cache house?

A. It is hard to remember exactly but I almost feel as if Meloche and Ellis were both at my office.

Q. And you talked it over? A. Yes, sir.

Q. It was then you wrote to Lee Van Slyke or whoever happened to be recorder at Susitna?

A. Yes, after that.

Q. Mr. Ellis has testified that it was about the first of October he was out here?

A. I wouldn't be certain without getting the records as to the dates.

Q. It would be about that time? A. Yes, sir.

(Testimony of S. O. Morford.)

Q. Mr. Ellis stated that he left the creek up there on the third of September and came out past Hope and was here about the first of October for a few days—so your conversations with him must have been about that time?

A. It was fall I think when Ellis was here.

Q. And you wrote to Van Slyke about that time or very soon afterwards? A. Probably.

Q. To get what information you could?

A. Yes.

Q. When did you receive his answer?

A. I don't remember.

Q. You went out the next winter?

A. I went out that winter probably, in January maybe.

Q. And how long did you remain out? [133]

A. I think I came back here somewhere about the fore part of March.

Q. Do you remember who wrote this deed from Cummings to Ellis, dated the 28th of February, 1913?

A. It was written by Mr. Sauter probably in the office, I don't know.

Q. You didn't go to British Columbia?

A. No.

Q. I see that Eri Thompson is one witness and S. O. Morford another witness to the signature of Cummings—your deed was drawn up and you signed it in Seattle as a witness? A. On its return.

Q. From your knowledge of Cummings' signature? A. Yes, sir.

(Testimony of S. O. Morford.)

Q. You didn't meet Cummings in Seattle?

A. I don't remember that I did.

Q. At the time the money was paid he was in British Columbia, at the same place Thompson was?

A. I don't know where either one was.

Q. Thompson appears to have signed as a witness—did Thompson have anything to do with this deal?

A. Not to my knowledge—the money went direct to Cummings.

Q. Now this deed seems to have been dated the 28th of February and acknowledged the same day before some notary in British Columbia. Do you know what date it was returned to you in Seattle?

A. I couldn't tell exactly without going and hunting up my records, when I was in Seattle; it was during the time I was outside and after I had been over in the Yakima country.

Q. What time did you come back in the spring of 1913?

A. I think some time early in March I got here.

Q. Did you bring this deed with you when you came? [134]

A. No, I never saw it until it was returned to me; it went to Mr. Ellis from Mr. Sauter's office in Seattle.

Q. You didn't have it filed? A. No.

Q. The final payment was made by Mr. Ellis to Cummings about March, 1913?

A. It was made at the time the deed was delivered—it was along about the time of the date of the deed.

(Testimony of S. O. Morford.)

Q. At that time had you received an answer from Van Slyke to your letter enquiring about this case?

A. I think it is barely possible I did but more than probable I got the letter after my return—I am not certain.

Q. Before you went out, that fall of 1912, you wrote to the clerk of the court, I believe you said, in Valdez—is that correct?

A. Now as to the exact date, I couldn't say.

Q. It was before you went out you wrote him?

A. I wouldn't say as to that, I think I did; my remembrance of it is that I first wrote to Susitna and found that there was no attachment or suit there; then after receipt of that, it may have been after my return from Seattle, I wrote to the clerk of the court and in the final outcome of it, I was able to get two copies from the clerk of the court of the suits that were pending.

Q. You didn't know then, as far as you remember now, when you went outside in the fall of 1912, that these suits were actually filed?

A. If my memory serves me right, I didn't know that; the record of those letters would show; it is impossible for me to remember these dates and keep them accurately before me.

Q. Here is what is apparently a copy of a letter, very likely copy of a letter you wrote and then a letter from Mr. Van [135] Slyke—do you recognize those letters?

A. This is a copy of the letter I wrote Mr. Van Slyke in August, August 19, 1913, and this is the

(Testimony of S. O. Morford.)

reply that I received from Mr. Van Slyke in September, 1913.

Mr. RITCHIE.—We offer these two letters in evidence and ask that they be marked Plaintiff's Exhibit "H."

They are admitted without objection, marked Plaintiff's Exhibit "H," copies attached hereto and made a part hereof.

Q. Was it about the time you wrote that letter that you learned about these cases?

A. That was the rumor and that was the effort I was making to find out about the suits.

Q. You know now that those cases were filed in August, 1912? A. The record so shows, I believe.

Q. Mr. Ellis testified here a while ago that he found out everything he could after Arthur Meloche told him about this matter, but he had to hurry away and left it in your hands—you didn't make any special effort then to find out anything further about it that fall?

A. I think I wrote to Susitna Station that fall.

Q. Did you write immediately to the clerk of the court at Valdez?

A. I don't think I wrote the clerk of the court at Valdez at that time,—I don't know as I did.

Q. You are a pretty good lawyer—you knew that an attachment levied on real estate couldn't be any place except in the District Court?

A. I knew an attachment was required to be filed in the Commissioner's office, if an attachment was brought, and I looked there for the attachment.

(Testimony of S. O. Morford.)

Q. But you knew also, as a lawyer, that if an attachment was levied [136] on real estate, it must necessarily be in a case in the District Court?

A. Yes.

Q. But you didn't write at that time to the clerk of the court to ascertain if those suits were filed there?

A. I don't believe so, I don't remember that I did; the suits were not against Mr. Cummings.

Q. You knew that an attachment would be good against anyone having actual knowledge?

A. Not necessarily—the suit was not against the parties who had the record title.

Q. All you did then in pursuance of Mr. Ellis's instructions in the fall of 1912 was to write to Van Slyke to see what his record showed?

A. My recollection is that I first wrote to the Commissioner at Susitna to enquire if there was any suit pending there or any attachment having been filed and I received a reply that no attachment had been filed against any of the property and later, following that, whether before or after I came back, I made enquiry of the District Court and then as I remember it was the first time I learned that there were two cases; there had been a rumor of one, but I learned from my letters from the clerk of the court that there were two cases.

Q. How many times did you see Mr. Ellis in Seattle in the early part of 1913?

A. I think I met him at Mr. Sauter's office when

(Testimony of S. O. Morford.)

I went down; shortly after I went down and if I am not mistaken just one afternoon when the papers came back and I went up to Mr. Sauter's office to close it.

Q. Did you discuss these possible or rumored suits with him in [137] either of these conversations?

A. I told Mr. Ellis that there was nothing against the claim except the possibility of a judgment in the Court of Appeals; that judgment was actually rendered against Mr. Cummings before the date we passed the deed, but I didn't learn of it until I returned here in March and a notice of the case having been confirmed in the Court of Appeals was awaiting me on my return.

Q. And you didn't tell him about any suits in the District Court because you knew nothing of them at that time?

A. I don't think I had any knowledge of any; I told him I knew of nothing against the claims only this one suit—nothing that could be a lien or claim against it.

Mr. RITCHIE.—That will be all.

Redirect.

(By Mr. FINNEGAN.)

Q. I will ask you if you can identify these instruments? (Handing witness papers.)

A. Yes, sir.

Q. What do they purport to be?

A. One is a copy of the letter I wrote to the clerk of the court October 11, 1912 in answer to one re-

(Testimony of S. O. Morford.)

ceived from the clerk of the court dated October 8, 1912.

Mr. FINNEGAN.—We offer these letters in evidence.

They are admitted without objection, marked Defendant's Exhibit 4 and read to the Court by Mr. Finnegan. Copies are attached hereto and made a part hereof.

Q. Do you remember sending such a letter and receiving this answer?

A. My memory is recalled to it by seeing the copy.
[138]

Q. Did you ever receive any further answer from the clerk of the court as to any attachment that was levied?

A. Well, I don't remember; if my memory serves me right, I looked at the records in Valdez after I came back from Seattle and I had made the enquiry from Susitna as to any levy of attachment or record of attachment there and none existed. I pursued the matter from time to time to find out and I think talked with Mr. Ritchie about the publication of summons and I thought there would be no attempt to push any suit to judgment against Wallace and Thompson. Then I afterwards saw the publication of the notice and later found they had taken a default judgment in those cases.

Q. You were not interested in that litigation in any way? A. Not in the least.

Q. You were not acting for Mr. Thompson or Mr. Wallace, the defendants? A. Not at all.

(Testimony of S. O. Morford.)

(By Mr. RITCHIE.)

Q. It appears then since your memory has been refreshed, that you did have the information shown by those letters, that fall? A. Yes, sir.

Q. Your letter marked exhibit 4 reads—As soon as you receive return of attachment, please send me a copy of the writ and return, as I am informed an attachment has been placed upon the property at Susitna—you mean by that of course the Battle Ax claim? A. It was in reference to that.

Q. So you did at that time have knowledge of the attempt at attachment at least? [139]

A. The rumor of an attachment, that was all, and I was trying to find out whether any attachment or papers had been filed.

Q. Then the clerk writes to you that there has been no return of the writ of attachment, which necessarily shows that one had been issued?

A. Yes, probably.

Q. You spoke of the publication of notice—wasn't that about the fall of 1912 that this publication of summons was made?

A. I think not, I think there was a publication of summons later than that.

Q. You think there was none published at that time?

A. No, I didn't see it until later any way—it might have been; I picked it up in an older paper; I don't know of any publication of summons and I feel confident there was no publication of summons came to me until later, after my return here.

(Testimony of S. O. Morford.)

Q. You made some statement regarding a conversation with me—I will ask you if you did not have a conversation with me at the same time, very likely when you came back, or the next spring, 1913 about the pendency of this suit?

A. I have a faint recollection of talking with you about it.

Q. As you came through Valdez probably?

A. Possibly.

Q. Now I will ask you if the conversation was not something like this—you asked me what we were doing about those suits and what we expected to get out of them and then you said—I may be wrong about this—I will ask you if at that time you did not state that we had lost out on it because the notices of attachment had not been filed in Van Slyke's office at Susitna. You made that statement to me at that time or possibly later, did you not? [140]

A. It may have been at some time when we discussed it later, but I don't remember all of that conversation.

Q. Don't you think it was about that time?

A. I think it was some time after that.

Q. At that time you had ascertained, however, that the writs had not been filed by Van Slyke but had been sent to the clerk of the court instead? I mean the notice of the writ?

A. The notice of the writ of attachment I got after I came back, I think, from below. The letter was in October—whether I received any notices of the return until after I came back in the spring or

(Testimony of S. O. Morford.)

not, I couldn't say. They were not on file apparently at the time the letters were written and I had conferred at a later date again and found there was no levy of attachment or notice of attachment filed in the commissioner's office in Susitna, even a later date than the time when the first inquiry was made.

Q. Now you and Mr. Ellis both knew from the first of October, 1912, about that date, that there was a suit pending and an attempted attachment on the Battle Ax claim and you depended upon what you thought was a fatal, technical omission in the failure of Van Slyke to record this notice?

A. No, the suit, if my memory serves me right, the rumored suit, was a suit against Wallace and Thompson, Snook against Wallace and Thompson. The claim had been apparently filed or a suit or some proceedings instituted.

Q. So there was a rumor that a notice had been filed on the claim in the fall of 1912.

A. Then is when I followed it with my enquiry—after that I got the returns by letters as you have seen them here. I had no idea that any suit would be brought by Snook against Thompson [141] and Wallace and knew nothing of the other men at all until later, and relied upon the statement made by Snook to me, in the early history of it.

Q. But the correspondence between yourself and the clerk of the court in October, 1912, shows that you had knowledge that a written attachment had been issued and you believed an attempt had been

(Testimony of S. O. Morford.)
made to levy it on this property?

A. I thought there had been an attachment issued and that there would probably be a return of it.

Q. So you had that much notice of the attempt to attach at that time?

A. Yes, as against Thompson and Wallace, had an intimation of it.

Q. Yes, against them, but on the Battle Ax claim?

A. I presume I thought it would apply to that, if anything.

Witness excused.

TESTIMONY CLOSED. [142]

I do hereby certify that I am the official stenographer of the court for the Third Judicial Division of Alaska; that as such I reported the proceedings had in the above-entitled cause, to wit, J. L. Reed vs. Eri Thompson and M. A. Ellis; that the above and foregoing is a full, true and correct transcript of the evidence introduced at said trial.

Dated at Valdez, Alaska, February 28, 1916.

L. HAMBURGER. [143]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Order Settling, etc., Bill of Exceptions.**CERTIFICATE OF TRIAL JUDGE.**

The undersigned, the Judge of the above-named court who presided at the trial of the above-entitled cause, hereby certifies, in pursuance of the foregoing stipulation of the parties, and in accordance with the facts, that the annexed and foregoing bill of exceptions and transcript of evidence is a true and complete transcript of all the evidence adduced or offered at said trial and of all proceedings thereat.

Witness the hand of said Judge and the seal of said court, at Valdez, Alaska, this 21 day of April, 1916.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Apr. 21, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[144]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Motion and Objections to the Bill of Exceptions.

The plaintiff, J. L. Reed, interposes objections to the Bill of Exceptions contained in the transcript of record on appeal herein, upon the following grounds:

FIRST. That said defendant M. A. Ellis failed to file a statement of his exceptions taken during the trial to the ruling of the Court and to its findings of fact, prepared and settled as in an action, with the clerk of this court within ten days from the date of the entering of the decree in this cause, to wit, on the first day of December, 1915, and that no further time therefor was allowed by the Court.

SECOND. That said defendant M. A. Ellis failed to file a motion for a new trial herein within three days after the findings and decree herein, to wit, within three days after the first day of December, 1915, and that no further time therefor was allowed by the Court.

That for the reasons above set forth said objections are made to the incorporation of any or all the evidence adduced at the trial of this cause into the Bill of Exceptions and upon which said defendant M. A. Ellis' assignment of errors is predicated, and the plaintiff herein now moves the Court for an order to strike the same from the Bill of Exceptions and Transcript of the Record.

J. L. REED and
E. E. RITCHIE,
Attorneys for Plaintiff.

Service accepted April 21, 1916.

J. J. FINNEGAN,

Attorney for Defendant, Ellis.

Filed in the District Court, Territory of Alaska,
Third Division, Apr. 21, 1916. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy. [145]

*In the District Court for the District of Alaska,
Third Division.*

S-49.

J. L. REED,

Plaintiff,

vs.

M. A. ELLIS, ERI THOMPSON and J. M. CUM-
MINGS,

Defendants.

**Minute Order Overruling Objections to Filing Bill
of Exceptions.**

Now, on this day, the hearing on the objections to the filing of the Bill of Exceptions in this cause having come on to be heard, J. L. Reed, appearing as attorney for the plaintiff and J. J. Finnegan appearing as attorney for defendants, and after arguments had and the Court being fully advised in the premises,—

IT IS ORDERED that said objections be and the same are hereby overruled.

February, 1916, Term—April 21st—55th Court Day, Friday.

Entered in Court Journal No. 10, page 89. [146]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Bond for Costs on Appeal of Defendants.

KNOW ALL MEN BY THESE PRESENTS,
That the undersigned, Eri Thompson, M. A. Ellis
and J. M. Cummings, the defendants in the above-
entitled cause in the above-named court, as prin-
cipals, by S. O. Morford, their attorney of record in
said cause, and the National Surety Company, a cor-
poration organized under the laws of the State of
New York and authorized to transact the business
of surety in the State of Washington and in the Ter-
ritory of Alaska, as surety, are held and firmly
bound unto J. L. Reed, the plaintiff in said cause,
in the penal sum of FIVE HUNDRED DOLLARS
(\$500.00), lawful money of the United States of
America, to be paid to said obligee, his repre-
sentatives or assigns; for which payment, well and
truly to be made, the undersigned bind themselves
and their respective heirs, representatives and suc-
cessors, jointly and severally, firmly by these
presents.

Sealed with our seals and executed this 19th day of May, 1916.

The condition of this obligation is such, that whereas the above bounded principal obligors have appealed or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree rendered and entered in the above-entitled cause by the above-named District Court for the Territory of Alaska, Third Division, under date of November 18th, 1915.

Now, therefore, if said appellants shall prosecute their said appeal to effect, and if they fail to make their plea good, shall answer all costs, then this obligation shall be void, else valid.

M. A. ELLIS.

By S. O. MORFORD,
His Attorney of Record.

[Seal] NATIONAL SURETY COMPANY.

By G. W. ALLEN,
Resident Vice-President.

Attest: E. P. WELCH,
Resident Assistant Secretary.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 19, 1916. Arthur Lang, Clerk. By Robert L. Wever, Deputy. [147]

*In the District Court for the District of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS and J. M. CUM-
MINGS,

Defendants.

Citation on Appeal.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to
the Above-named J. L. Reed, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 18th day of June, 1916, pursuant to an appeal filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein M. A. Ellis is appellant and you are appellee, to show cause, if any there be, why the judgment rendered and entered by said District Court in the above-entitled cause, on the 18th day of November, 1915, and in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the

United States of America, and the seal of said District Court, this 19th day of May, 1916, and of the Independence of the United States the one hundred and fortieth.

[Seal]

FRED M. BROWN,
District Judge, Territory of Alaska, Third Division.

By ARTHUR LANG,
Clerk of the District Court for the Territory of Alaska, Third Division.

By Robert L. Wever,
Deputy.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 19, 1916. Arthur lang, Clerk. By Robert L. Wever, Deputy. [148]

Affidavit of Service.

United States of America,
Territory of Alaska,—ss.

Anthony J. Dimond, being first duly sworn, says: That on the 23d day of May, 1916, at Valdez, Alaska, he personally served J. L. Reed with a copy of the within Citation, by delivering to said J. L. Reed a true copy thereof.

ANTHONY J. DIMOND.

Subscribed and sworn to before me this 23d day of May, 1916.

[Seal]

GEO. J. LOVE,
Notary Public in and for Alaska.
Commission expires Nov. 25, 1918.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 23, 1916. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [149]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS, and J. M. CUM-
MINGS,

Defendants.

Supersedeas Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, M. A. Ellis, a defendant in the above-entitled action, as principal, and Hugh Dougherty, of Seward, Alaska, and James A. Stewart, of Seward, Alaska, as sureties; are held and firmly bound unto J. L. Reed, the plaintiff in said action, in the penal sum of Two Thousand Dollars (\$2,000.00), lawful money of the United States of America, to be paid to said obligee, his representatives or assigns; for which payment, well and truly to be made, we bind ourselves and our respective heirs and representatives, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 22d day of May, 1916.

The condition of this obligation is such that, whereas, lately, at a session of the District Court for

the Territory of Alaska, Third Division, holden at Seward, in said division, in an action pending in said court between the above-named obligee J. L. Reed, the plaintiff therein, and the above-named principal obligor M. A. Ellis, the defendant therein, a judgment and decree was made and entered by said Court on the 1st day of December, 1915, in favor of said plaintiff and against said defendant, and said defendant has appealed from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, and has given bond as required by law for the costs of said appeal, and has served upon the adverse party a citation duly issued in pursuance of said appeal, and desires now to give a further bond to supersede [150] said judgment and stay the execution thereof until the determination of said appeal, as provided by law—the amount of which supersedeas bond has been fixed, in and by the order made by said District Court in said action on the 21st day of April, 1916, allowing said appeal, at the sum of \$2,000.00;

Now, therefore, the condition of this obligation is such that if said principal obligor, defendant and appellant as aforesaid, shall prosecute his said appeal to effect, and if he fail to make his plea good, shall answer all damages and costs, then this obligation shall be void; else, valid.

M. A. ELLIS. (Seal)

HUGH DOUGHERTY. (Seal)

J. A. STEWART. (Seal)

In presence of:

J. J. FINNEGAN.

S. O. MORFORD.

United States of America,
Territory of Alaska,—ss.

Hugh Dougherty and James A. Stewart, being first duly sworn, each for himself deposes and says: That he is one of the persons named as sureties in and who executed the foregoing bond on appeal; that he is a resident within the Territory of Alaska, and is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; and that he is worth Two Thousand Dollars (\$2,000.00) the amount specified in said bond as the penal sum thereof, over and above all debts and liabilities, and exclusive of property exempt from execution.

HUGH DOUGHERTY.

JAMES A. STEWART.

Subscribed and sworn to before me this 22d day of May, 1916.

[Seal]

J. J. FINNEGAN,

Notary Public in and for the Territory of Alaska.

Commission expires Aug. 19, 1917. [151]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 22, 1916. Arthur Lang, Clerk. By Robert L. Wever, Deputy.

The above bond approved this 27th day of May, 1916.

[Seal of the District Court]

ARTHUR LANG,

Clerk of the District Court, for the Territory of
Alaska, Third Division. [152]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S-49.

J. L. REED,

Plaintiff,

vs.

ERI THOMPSON, M. A. ELLIS, and J. M. CUM-
MINGS,

Defendants.

Praeipice for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a copy of the record in the above-entitled cause, as a return of the appeal heretofore taken and granted by the defendant, M. A. Ellis, to review the judgment in the above-entitled cause, which record shall consist of the following filed and records, to wit:

1. Amended Complaint.
2. Demurrer to Amended Complaint.
3. Order Overruling Demurrer.
4. Answer.
5. Plaintiff's Exhibits "A," "B," "D," "E,"
"F," "G" and "H."
6. Stipulation Regarding Plaintiff's Exhibit
"C."
7. Copy of Lien Notice of Karl Karlson in S-21.
8. Copy of Judgment in Case No. 233.
9. Copy of Judgment in Case No. S-9.

10. Defendant's Exhibits 1, 2, 3 and 4.
11. Opinion.
12. Findings of Fact and Conclusions of Law.
13. Judgment.
14. Order Granting 90 Days to File Exceptions.
15. Memorandum of Costs and Disbursements.
16. Motion for New Trial.
17. Minute Order Overruling Motion for New Trial.
18. Order Overruling Objections to Costs and Disbursements.
19. Order Extending Time to March 19th, 1916, in Which to File Bill of Exceptions. [153]
20. Order Extending Time to April 15th, 1916, in Which to File Bill of Exceptions.
21. Order Extending Time to April 19th, 1916, in Which to File Bill of Exceptions.
22. Order Extending Time to April 21st, 1916, in Which to File Bill of Exceptions.
23. Petition for Appeal and Assignment of Errors.
24. Order Relating to Assignment of Errors.
25. Order Allowing Appeal and Fixing Bond.
26. Bill of Exceptions and Transcript of Testimony.
27. Certificate of Stenographer.
28. Certificate of Trial Judge.
29. Motion and Objections to Bill of Exceptions.
- 29a. Order Overruling Objections to Bill of Exceptions.
30. Bond for Costs on Appeal.

31. Citation.

32. This Praeceptum.

S. O. MORFORD,

J. J. FINNEGAN,

Attorneys for Defendant Ellis.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 19, 1916. Arthur Lang, Clerk. By Robert L. Wever, Deputy. [154]

*In the District Court for the Territory of Alaska,
Third Division.*

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Territory of Alaska,
Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do *hereby that* the hereto annexed 155 pages, numbered from 1 to 155, inclusive, are a true and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that the same is made in accordance with the stipulation of counsel for the parties, respectively.

I further certify that the foregoing transcript has been prepared, examined and certified to *be me* and the cost thereof, amounting to \$44.50, was paid to me by S. O. Morford, attorney for the defendant and plaintiff in error herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Valdez, Alaska, this 27 day of May, A. D. 1916.

[Seal] ARTHUR LANG,
Clerk of the District Court, Territory of Alaska,
Third Division. [155]

[Endorsed]: No. 2811. United States Circuit Court of Appeals for the Ninth Circuit. M. A. Ellis, Appellant, vs. J. L. Reed, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Third Division.

Filed June 9, 1916.

F. D. MONCKTON.

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

